CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 118

FLORSHEIM BROTHERS DRYGOODS COMPANY, LTD., PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 31, 1929

CERTIORARI GRANTED OCTOBER 14, 1929

(34,249)

(34,249)

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA

No. 1623. At Law

FLORSHEIM BROTHERS DRY GOODS CO.

versus

UNITED STATES OF AMERICA

PETITION—Filed Oct. 15, 1926

To the Honorable Ben C. Dawkins, Judge United States District Court in and for the Western District of Louisiana:

The petition of the Florsheim Brothers Dry Goods Company, Ltd., represented herein by the undersigned counsel, with respect represents:

1

That it is a corporation organized under the laws of the State of Louisiana with its domicile at Shreveport, Caddo Parish, said State, and having its principal place of busi-[fol. 2] ness in said City, Parish and State in the Western District of Louisiana, within the territory and jurisdiction of, and subject to the jurisdiction of this Honorable Court.

2

That it is engaged in the general wholesale dry goods and notion, or commonly called jobbing business, located at said city in said Parish and State, and doing said business in the trade territory thereof.

3

That the United States of America is justly, truly and legally indebted unto your petitioner in the sum of Eleven Thousand Five Hundred Seventeen and 57/100 ($11,517.57)

Dollars, together with six per cent (6%) per annum interest thereon from the respective dates of payments, as hereinafter set out, together with all costs of this suit.

4

That petitioner, in accordance with law, and particularly in accordance with a memeographed letter dated February 27th, 1919, filed by Daniel C. Roper, Commissioner of Internal Revenue, relative to extension of time for filing returns, did prepare and file with the then Collector of Internal Revenue of the United States, in the District of Louisiana, a tentative return for and covering the operation for the year ended December 31, 1918.

5

That said tentative return was so filed, as above set forth, prior to March 15, 1919, and petitioner obtained an extension for the filing of complete return to June 15, 1919.

[fol. 3] 6

That on June 14, 1919 said complete return, prepared under provisions of Revenue Act of 1918, was mailed at Shreveport, La., addressed to the Collector of Internal Revenue, at New Orleans, La., (June 15, 1919, being a Sunday) and same was received by said Collector June 16, 1919.

7

That said final return showed taxes to be due in the amount of $66,982.82, which said amount was paid by petitioner to and accepted by the then Collector of Internal Revenue for the District of Louisiana.

8

That subsequently an examination of said return for the year 1918 was made and on May 21, 1924, the Income Tax Unit (file reference IT:CA:L:2334-6) addressed a communication to petitioner advising that as the result of such examination an additional tax was in order to be assessed for said year amounting to $24,089.97.

9

That an exception was taken to said finding and an appeal was presented to the Hon. Commissioner of Internal Revenue and a hearing had thereon.

10

That the five year statute of limitation prescribed by the Acts of Congress of United States and particularly Section 277 of the Revenue Act of 1924 fixing the time within which the Commissioner might make an assessment and collect [fol. 4] same, expired March 15, 1924, but petitioner executed an instrument on March 1, 1924, purporting to extend the time for making assessment and collecting same, for one year after the expiration period of statutory period of limitation which was the only instrument executed by petitioner purporting to extend said time, and petitioner now avers that said purported extension or renunciation of prescription executed by it on March 1, 1924, was and is illegal, null, void and of no effect, being prohibited by Article 3460 of the Civil Code of Louisiana, which is now urged in bar of any renunciation or extension of prescription which may be claimed to have resulted by reason of petitioner's execution of said instrument as above alleged.

11

That under date of June 10, 1925 (file reference IT: ELSM:A-19896) the Hon. Commissioner advised petitioner that there was a deficiency in the sum of $11,282.15, which would be immediately assessed.

12

That notice of such assessment and demand, dated June 18, 1925, for the payment of said amount, was mailed from New Orleans, La., on said date, demanding payment thereof within ten days from receipt of said notice and demand.

13

That petitioner protested against the payment of said amount presented to the Collector of Internal Revenue petitioner's position that the time within which an assessment

and collection could be made had elapsed which protest was [fol. 5] without avail and that, with reservation of petitioner's rights, subject to its protest and under duress, fearing that writs would be issued by the Collector of Internal Revenue and its property seized in satisfaction of said taxes, petitioner paid said amount on dates and in the sums as follows:

August 28, 1925, paid on tax	$1,282.15
September 4, 1925, int. on tax	112.82
September 26, 1925, paid on tax	2,000.00
September 30, 1925, int. on tax	50.00
October 28, 1925, paid on tax	2,000.00
November 2, 1925, int. on tax	40.00
November 28, 1925, paid on tax	2,000.00
November 28, 1925, int. on tax	30.00
December 30, 1925, paid on tax	520.19
December 30, 1925, int. on tax	2.60

balance of said tax being paid as of date December 30, 1925, by claims of credit for allowances made for over-assessment in the years 1917, 1919 and 1920; total amount of tax so paid being $11,282.15 interest thereon paid amounting to $235.42.

14

That petitioner has exhausted all its remedies before the income tax unit and before the Commissioner of Internal Revenue before paying said tax and that same was paid under protest and duress in order to prevent petitioner's property being seized and sold to satisfy said tax, and that petitoner is compelled to appeal to judicial process to enforce its legal rights and obtain redress from the illegal, erroneous and wrongful acts herein complained of.

[fol. 6] 15

That the time for making an assessment of taxes and collecting same, prescribed by the Acts of Congress and particularly Sec. 277 of the Revenue Act of 1924, had already elapsed before there were any proceedings taken for the collection of the tax paid, as above set forth (the petitioner alleging that the time therefor having expired on

March 15, 1924, being five years from the date said tax was originally due, or in the alternative on June 16, 1924, five years from the filing of the return, if the Court should so hold, or that the latest possible date under any theory, June 16, 1925, if the Court should hold that prescription begins to run from the filing of the final return and waiver is held to be valid) the notice and demand being dated June 18, 1925, mailed from New Orleans on said date and subsequently received at Shreveport by petitioner, which notice gave petitioner ten days' additional time before any writ could have issued to enforce the collection thereof, and accordingly the assessment of said amount of $11,282.15 was illegally made and the collection thereof illegally enforced, without any warrant or authority in law.

16

That on or about the 20th day of February 1926, petitioner filed with the Commissioner of Internal Revenue its claim for refund of taxes so illegally collected, according to provisions of law in that regard, and regulations of the Secretary of the Treasury established in pursuance thereof, as shown by copy of said claim hereto attached and made part thereof, and that more than six (6) months has elapsed since said date with no hearing on said claim had and no decision rendered thereon.

[fol. 7]

17

That the Collector of Internal Revenue, by whom said tax and interest was collected, is not now in office as Collector of Internal Revenue, said amounts having been collected by Hon. D. A. Lines, said D. A. Lines being succeeded by Hon. J. O. Bender about March, 1926, who is now the Collector of Internal Revenue at New Orleans.

Wherefore, Petitioner prays that copies of this petition be served upon the proper officials and representatives of the United States of America, in accordance with law; that the United States of America and its proper officials be cited to appear and answer hereto, and upon trial hereof that there be judgment herein in favor of petitioner, against the United States of America and that petitioner

do have and recover judgment from and against the United States of America in the full sum of $11,517.57 with interest on the sum of $1,282.15 from August 28, 1925 until paid; at the rate of 6% on the sum of $112.82 from September 4, 1925 until paid, with like rate of interest; on the sum of $2,000.00 from Sept. 26, 1925 until paid, with like rate of interest; on the sum of $50.00 from September 30, 1925 until paid with like interest; on the sum of $2,000.00 from Oct. 28, 1925, until paid with like interest; on the sum of $40.00 from Nov. 2, 1925 until paid with like interest; on the sum of $2,030.00 from Nov. 28, 1925 until paid with like interest; and on the sum of $4,002.60 from Dec. 30, 1925 until paid, with like interest together with all costs of this suit.

Petitioner further prays for all other orders and decrees necessary and proper, for general relief.

Wise, Randolph, Rendall & Freyer, Attorneys.

[fol. 8] *Duly sworn to by Seymour L. Florsheim. Jurat omitted in printing.*

STATE OF LOUISIANA,
Parish of Caddo:

Before me, the undersigned authority, personally came and appeared A. B. Freyer, who being first duly sworn deposes and says that he is a member of the firm of Wise, Randolph, Rendall & Freyer, attorneys for plaintiff in the above suit of Florsheim Brothers Drygoods Company, Ltd. vs. United States of America, and that a copy of the petition filed in said suit has been mailed by registered letter addressed to the Attorney General of the United States at Washington, D. C., on this date.

A. B. Freyer.

Sworn to and subscribed before me this 15th day of October, 1926. L. B. Foye, Notary Public, Caddo Parish, La. (Seal.)

[fol. 9] Treasury Department, Internal Revenue Service. Form 843—Jan., 1922. Comptroller General U. S. January 18, 1922.

(Execute separate form for each tax period.)

Claim for

— Abatement of tax assessed.
— Credit against outstanding assessments.
— Refund of taxes illegally collected.
— Refund of amounts paid for stamps used in error or excess.

Important: File with Collector of Internal Revenue where assessment was made. Not aceptable unless completely filled in.

Notice to Collector: Collector musts indicate in block above the kind of claim, except in Income Tax cases.

Date received by Administrative Unit: Stamp here ——.

Collector's notation: District: ——. Account number: ——. Date received: Stamp here: ——. —— ——, Collector of Internal Revenue.

State of Louisiana,
County of Caddo, ss:

Type or print: (Name of taxpayer or purchaser of stamps:) The Florsheim Bros. Dry Goods Co., Ltd.; (Residence—give street and number as well as city or town and State:) 510-16 Commerce Street, Shreveport, Louisiana; (Business address:) ——.

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpawer named, and that the facts given below with reference to said statement are true and complete:

[fol. 10] 1. Business in which engaged—Wholesale Dry Goods, Notions and Furnishings. Period from Jan. 1, 1918, to Dec. 31, 1918.

2. Character of assessment or tax— ——. (State for or upon what the tax was assessed or the stamps affixed.)

3. Amount of assessment or stamps purchased—Original $66,982.82 additional $78,264.97.

4. Reduction of Tax Liability requested (Income and Profits Tax)—$11,282.15.

5. Amount to be abated—none.

6. Amount to be refunded (or such greater amount as is legally refundable)—$11,282.15.

7. Dates of payment: (See Collector's receipts or indorsements of canceled checks.) (If statement covers tax liability, items 8-11, inclusive, must be answered.)

8. District in which return (if any) was filed—Louisiana.

9. District in which unpaid assessment appears—None unpaid.

10. Amount of overpayment claimed as credit—none.

11. Unpaid assessment against which credit is asked; period from—to—none.

[fol. 11] Deponent verily believes that this application should be allowed for the following reasons:

Return was for calendar year 1918. Return was filed on or before March 15, 1919. Five year statute of limitation prescribed by Sec. 277 of the Revenue Act of 1924, caused the time within which the Commissioner might make assessment to expire on or before March 15, 1924; this however was extended to December 31, 1924, by taxpayer signing a waiver of the statute of limitation. This was not further extended. Under date of June 10, 1925, file reference IT: E:S:A-19896 the Commissioner advised taxpayer a deficiency in the sum of $11,282.15 was being immediately assessed, under Section 274 (d) of the Revenue Act of 1924. In due course notice and demand for the payment of $11,282.15 was received which taxpayer paid under protest after having been granted permission to extend payment thereof as provided in Section 270 of the Revenue Act of 1924. Taxpayer in application for this extension made its position clear that the correctness and legality of the tax was not being accepted, and was being paid only to avoid distraint and seizure. It was at that time contended and is here made the basis of this claim that the tax was not assessed with the required time, therefore is a tax, illegally collected and should be refunded. In this position taxpayer cites the case of New York and Literage Company vs. Bowers, Collector, decided by the United States District Court for the Southern District of New York on February 13, 1925, and in turn affirmed by the Circuit Court of Appeals for the Second Circuit on February 1, 1926.

(Attach additional sheets if necessary.)

[fol. 12] (Signed) The Florsheim Bros. Dry Goods Co. Ltd.,
by (Signed) Seymour Florsheim, President.

Sworn to and subscribed before me this 19th day of February, 1926. (Signed) A. B. Freyer, (Title:) Notary Public. (Seal.)

Filed Oct. 15, 1926. W. B. Lee, Clerk U. S. Dist. Court, West. Dist. of Louisiana.

(This affidavit may be sworn to before a Deputy Collector of Internal Revenue or Revenue Agent without charge.)
2—11704.
Citation and Marshal's Return thereon omitted.

* * * * * * *

[fol. 13] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed Dec. 30, 1926

Now comes the United States of America, made defendant herein, appearing through Philip H. Mecom, United States Attorney, and J. Fair Hardin, Assistant United States Attorney, for the Western District of Louisiana, and makes answer to Plaintiff's petition, as follows:

1

The allegations of paragraph 1 are admitted.

2

The allegations of paragraph 2 are admitted.

3

Defendant especially denies that it is justly, truly and legally indebted unto Plaintiff in the sum of $11,517.57, or any amount whatsoever.

4

It is admitted that the Plaintiff filed a so-called tentative return therein requesting an extension of time for filing

its income tax return for the year 1918, but in all other respects the allegations of said paragraph are denied.

[fol. 14] 5

It is admitted that the so-called tentative return of Plaintiff was filed prior to March 15, 1919, and that Plaintiff obtained an extension of time for the filing of its return for the year 1918, but in all other respects the allegations of said paragraph are denied.

6

The allegations of paragraph 6 are admitted.

7

The allegations of paragraph 7 are admitted.

8

The allegations of paragraph 8 are admitted.

9

The allegations of paragraph 9 are admitted.

10

Defendant denies the allegations contained in paragraph 10 of Plaintiff's petition.

11

Defendant admits that under date of June 10, 1925, the Plaintiff was advised that under the provisions of Sub-Division (d) of Section 274 of the Revenue Act of 1924, additional taxes in the amount of $11,282.15 had been assessed.

[fol. 15] 12

Defendant admits that notice of such assessment and demand for payment of said tax issued June 18, 1925, and that said notice is the best evidence of its contents.

13

Defendant admits the following payments were received from Plaintiff:

Tax

Aug. 31, 1925	$1,282.15
Sept. 28, 1925	2,000.00
Oct. 29, 1925	2,000.00
Nov. 30, 1925 (Cr. Over payment 1919)	1,481.55
Dec. 2, 1925	2,000.00
Dec. 5, 1925 (Cr. Over payment 1917)	1,998.26
Jan. 2, 1926	520.19

Interest

9- 4-25	$112.82
10- 1-25	50.00
11- 2-25	40.00
11-30-25	30.00
1- 2-26	2.60

The total amount of taxes paid being $11,282.15 and the total amount of interest thereon paid amounting to $235.42, all of which payments were made under protest, but in all other respects the allegations of this paragraph are denied.

[fol. 16] 14

Defendant admits that the Plaintiff duly filed an appeal from said assessment, and after payment of the tax set out filed a claim for refund, but otherwise denies the allegations of paragraph 14.

15

The allegations of paragraph 15 are denied.

16

Defendant admits that on March 3, 1926, the Plaintiff filed a claim for the refund of the additional taxes so paid, and that at the time of the filing of this suit no action had been taken on such claim for a refund by the proper officers of the Defendant, but in all other respects the allegations of said paragraph are denied.

It is admitted that the Collector of Internal Revenue, who collected the said additional taxes and interest is not now in office and was not in office on the date this suit was filed.

Wherefore defendant prays that the demand of Plaintiff be rejected and this suit be dismissed at the costs of Plaintiff, and for full, general and equitable relief in the premises.

Philip H. Mecom, United States Attorney. J. Fair Hardin, Assistant United States Attorney.

[fol. 17] *Duly sworn to by Philip H. Mecom. Jurat omitted in printing.*

I certify that I have mailed a carbon copy hereof to opposing counsel of record, Dec. 30, 1926.

Philip H. Mecom.

[fol. 18] In United States District Court

Stipulation Waiving Trial by Jury—Filed Nov. 10, 1927

It is hereby stipulated and agreed by and between the parties to the above entitled action that a jury be and is hereby waived, and the case to be tried by the Court without a jury.

Done and signed at Shreveport, Louisiana, on this the 10th day of November, 1927.

Wise, Randolph, Rendall & Freyer, Attorneys for Plaintiff. Philip H. Mecom, United States Attorney, Attorney for Defendant.

In United States District Court

Motion for Directed Verdict—Filed Nov. 10, 1927

Now comes the Florsheim Brothers Drygoods Company, Ltd., plaintiff in the above numbered and entitled cause, represented herein by undersigned counsel, and at the con-

clusion of the introduction of all evidence by the plaintiff and the defendant herein, files this its motion for a directed verdict, in favor of the plaintiff and against the defendant, as prayed for in the petition.

Wherefore, Premises considered, appearer moves that the Court direct itself, acting in place of a jury, to find a verdict for the plaintiff and against defendant in the amount sued for.

[fol. 19] Further prays for all other orders and decrees necessary for costs and general relief.

Wise, Randolph, Rendall & Freyer, Attorneys for Plaintiff.

IN UNITED STATES DISTRICT COURT

SPECIAL REQUEST FOR FINDING OF LAW AND FACT ATTACHED TO PLAINTIFF'S BRIEF—Filed Jan. 2, 1928

1. Accordingly, in consideration our motive for a directed verdict filed at the conclusion of the evidence in this case (the jury having been waived by written stipulation of counsel filed in the record) we ask that the Court find as a fact that there is no proof in the record that a proper and legal assessment was made within the statutory period as extended by the agreement or waiver, and therefore the case is governed by Section 277 of the Revnue Act of 1924 or 1926 if either of these acts are held to apply to this case, and the Government had no right to collect the tax at the time it was demanded and its payment enforced.

2. We further ask that the Court find that an agreement was entered into between the Government and plaintiff, in writing, executed by the Commissioner under authority of the Revenue Act of 1921, fixing the period of time within which the tax for 1918 should be determined, assessed and collected as not later than June 16, 1925; that such agree-[fol. 20] ment became the law governing the collection of said tax as between the parties, exclusive of any subsequent Act of Congress in derogat*ing* of plaintiff's rights fixed under said agreement; that the tax was not assessed and collected within the period fixed in said agreement and that at the time the payment of the tax was demanded and en-

forced the Government had no legal right to collect the same and it should therefore be refunded.

3. We further request that the Court find that Section 278 of the Revenue Act of 1924 does not apply to this case for the reason that said Act was not retroactive in effect; that no assessment was actually made within the statutory period (even accepting the theory of the Government that an assessment was made prior to June 16, 1925) which statutory period referred to in said Act referred to the period fixed by the statute and not to that fixed by convention, which contemplated and included the actual collection of the tax as well as its assessment within a stipulated period; and lastly, for the reason that this Section of the Act of 1924 had been amended by the Act of 1926 prior to the filing of this suit, which last named Act specifically declared its retroactivity.

4. That the Court find that the Government had no right to collect the tax in question at the time its demand was made and enforced against the plaintiff, under the Revenue Act of 1926, if it is held to govern this case, for the reason that paragraph (d) of Section 278 of said Statute expressly holds, even in cases where the assessment has been made within the statutory period, that the collection of the tax cannot be enforced unless the proceedings are begun prior to the expiration of the period of collection agreed upon in writing by the Commissioner and taxpayer, which period [fol. 21] in this case was fixed by such written agreement as on or before June 16, 1925, and accordingly the payment of the tax was illegally enforced subsequent to that date and should be refunded.

Accordingly, we respectfully pray that there be judgment herein as prayed for in the petition.

Respectfully submitted.

Wise, Randolph, Rendall & Freyer, Attorneys for Plaintiff. A. B. Freyer.

W. B. Lee, Clerk.

IN UNITED STATES DISTRICT COURT

OPINION—Filed Feb. 6, 1928

DAWKINS, J.:

Plaintiff brings this suit to recover back from the government the sum of $11,517.57, paid under protest as income, war profit and excess profit taxes for the year 1918. It made a tentative return before the 15th day of March, 1919, and obtained an extension under which its final figures were submitted and filed on June 16th of that year. Subsequently, there was a re-examination of the return and on March 1, 1924, an agreement was signed with the government, reading as follows:

[fol. 22] "In pursuance of the provisions of subdivision (d) of Section 250 of the Revenue Act of 1921, Florsheim Bros. Dry Goods Co. Ltd. of Shreveport, La., and the Commissioner of Internal Revenue, hereby consent to a determiation, assessment, and collection of the amount of income, excess profits, or war profits taxes due under any return made by or on behalf of the said Florsheim Bros. Dry Goods Co. Ltd., for the year 1918 under the Revenue Act of 1921, or under prior income, excess profits, or war-profits tax Acts, or under Section 38 of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909. This waiver is in effect from the date it is signed by the taxpayer and will remain in effect for a period of one year after the expiration of the statutory period of limitation, or the statutory period of limitation, as extended by any waivers already on file with the Bureau, within which assessments of taxes may be made for the year or years mentioned."

On June 10, 1925, the Deputy Commissioner mailed to plaintiff the following letter, to wit:

"In accordance with the provisions of Section 274 (d) of the Revenue Act of 1924, there has been assessed against you an income and profits tax amounting to $11,282.15 for the taxable year 1918, the details of which are set forth in the attached statements.

Under the provisions of Section 379 (a) of the Act you have the right to file with the Collector of Internal Revenue,

within ten days after notice and demand for payment, a claim for abatement of this tax or any part thereof. The claim should have attached to it all evidence and data upon which you rely for support thereof, and should be accom- [fol. 23] panied by a bond not exceeding double the amount of the claim, with such sureties as the Collector deems necessary. When the claim is received by the Collector it will be transmitted to the Commissioner of Internal Revenue, Washington, D. C., who will notify you of the action taken."

Attached thereto was the following Statement:

"Deficiency in Tax

Calendar Year 1918, $11,282.15

You are advised that after careful consideration and review, your aplication under the provisions of Section 327 for assessment of your profits tax as prescribed by Section 328 of Revenue act of 1928 has been allowed. Your profit tax is based upon a comparison with a group of representative concerns which in the aggregate may be said to be engaged in a like or similar trade or business as to that of your company.

The result of the audit under the above mentioned provisions is as follows:

Profits Tax, Section 328			$71,135.36
Net income, Bureau letter dated May 21, 1924		$132,648.81	
Less: Additional Depreciation allowed on Furniture and Fixtures capitalized—10% of $1,000.00		100.00	
Corrected net income		$132,548.81	
Less: Profit Tax	$71,135.36		
Exemption	2,000.00		
		73,135.36	
[fol. 24] Balance taxable at 12%		59,413.45	7,129.61
Total Tax assessable			$78,264.97
Tax previously assessed: Account No. 41732			66,982.82
Additional Tax			$11,282.15"

Subsequently, under date of June 18, 1925, there was mailed to the taxpayer a green slip, reading:

"Notice and Demand for Income Tax

United States Internal Revenue Service

Notice is hereby given that there has been assessed against you the amount stated hereon. Demand is hereby made for immediate payment of said tax. If payment is not made within ten days after date of this notice, the Act provides that interest at the rate of 1 per cent per month will accrue from the due date. Date: June 18, 1925.

To the Collector of Internal Revenue at New Orleans.

Name and address: Florsheim Bros. Dry Goods Co., Ltd., Shreveport, La., 518 Commerce St.

Items: ——; Total Assmnt. 11,282.15.

Jun. OO C SPL No. 4.

Return this form with remittance."

Thereafter the sum claimed was paid in installments, as follows:

"Aug. 31, 1925, paid on tax	$1,282.15
Sept. 4, 1925, Interest on tax	112.82
Sept. 28, 1925, paid on tax	2,000.00
Sept. 28, 1925, interest on tax	50.00
Oct. 29, 1925, paid on tax	2,000.00
[fol. 25] Nov. 2, 1925, interest on tax	40.00
Nov. 30, 1925, paid on tax	2,000.00
Nov. 30, 1925, interest on tax	30.00
Jan. 2, 1926, paid on tax	520.19
Jan. 2, 1926, interest on tax	2.60"

This suit was filed on October 15, 1926, for a refund.

The only issue is the one of prescription or limitations. It is contended that, because these additional taxes were collected upon the return for the year 1918, both the right to assess and collect would have expired on June 16, 1924, but for the stipulation of waiver signed by the taxpayer on March 1st 1924, above quoted; and that in as much as the agreement was made under the law as it stood when exe-

cuted, both its language and effect was to extend only the rights and remedies as they existed at that time—that is, the government was bound to assess and collect the taxes within the stipulated year of extension.

It is conceded by the government that but for the extension these additional taxes would have had to be assessed and collected prior to June 16, 1924, but it claims that since the assessment was made within the extended period thereupon the provisions of the revenue act of 1924 became operative and the government had six additional years in which to collect.

It will be noted that the agreement itself refers to and is made "in pursuance of the provisions of sub-division (d) of Sec. 250 of the Revenue Act of 1921" and the taxpayer and commissioner "consent to a determination, assessment and collection of "the taxes" due under any return made by or on behalf of the taxpayer "for the year 1918 under the Revenue Act of 1921, or any prior acts." It is to remain in effect "for a period of one year after the expiration of the statutory period of limitation or the statutory period of [fol. 26] limitation as extended * * * within which assessment of taxes may be made for the year or years mentioned." In the meantime, that is between the date of the making of the agreement and the assessment and collection of the taxes in this case, the Revenue Act of 1924 was approved on June 2, 1924, which has been constructed by the Court of Appeals for this circuit in the case of U. S. vs. Crook, et al., 18 Fed. (2) p. 449, as giving the government six years within which to make collection, provided the assessment was made within the statutory period of five years. To this extent at least, it was decided that the Act of 1924 was applicable to the taxes accruing prior thereto and specifically for the year 1918 as the taxes in that case were for the same year as the present one. I apprehend, in view of this decision, if, notwithstanding the said agreement made on March 1st, 1924, after the passage of the Act of June 2, 1924, the commissioner had assessed the taxes before June 16th of that year, he would have had six additional years in which to make collection, as this would have put the case squarely within the ruling of Crook, et al., just cited. But the matter of prescription or limitations applicable to the claims of the government is one of grace, for it is the universal rule that none such run against the

sovereign except as allowed by statute. Therefore, in order for the plaintiff to escape in this instance, it is necessary that it point to circumstances which clearly bring it within that category. It must be remembered that the agreement was made both with respect to the law as it then existed and to the power of Congress to change it. In other words, the Act of June 2, 1924, could have not only extended the right to both assess and collect the taxes, but might have removed all limitations thereon had Congress seen fit so to do. However, it did not go that far but did provide, as held in the Crook case, if the assessment was made within the five years, the taxes might be collected at any time within six [fol. 27] years thereafter. While the agreement recites that the parties "consent to a determination, assessment and collection" of the taxes, it does not in that sentence declare that all of these acts shall be performed within the year. On the other hand, the concluding sentence reads that: "This waiver is in effect from the date it is signed by the taxpayer and will remain in effect for a period of one year after the expiration of the statutory period of limitation or the statutory period of limitation as extended by any waivers already on file with the Bureau, within which assessment of taxes made for the year or years mentioned." The effect of this is to say that the assessment might be made up to the last minute of the period as extended, and if this could be done, it must have been contemplated that if assessed during that time such a procedure would be for some practical purpose; yet, if the taxes had also to be collected within that time this would hardly be possible in event the assessment was made on or about the last day. It is thus seen that under the language of the agreement it is by no means clear that the right to collect should be lost if not exercised within the extended period. On the other hand, the inference to be drawn from the wording of this last sentence is rather strong that the assessment was the main thing to be accomplished within that time. It is true that but for the Act of 1924 both rights would have expired on June 16, 1924, but since Congress had the power to extend them and it did enlarge the time for collection if the assessment was timely made, it must be held, in the absence of a clear and conclusive agreement lawfully made, that the effect was to enlarge the period for collection to six years,

where to assessment was made, either within the statute or within the time of any conventional extension.

[fol. 28] Counsel for plaintiff cites paragraph (d) of Sec. 278, of the Revenue Act of 1926, which provides that where the assessment has been made in accordance therewith, proceedings to collect shall be allowed only if commenced "(1) within six years after the assessment of the taxes; or (2) prior to the expiration of any period for collection agreed upon by the Commissioner and taxpayer." However, I hardly think that this was intended to permit an agreement which would shorten the six year period, but was rather to cover cases where, if the government failed to institute proceedings for collection within that time, the taxpayer might escape the consequences of execution by consenting, within six years, to collection after the running of such delay. Otherwise, it would have the effect of empowering the Commissioner to disregard this long period allowed by the Statute and to consent to a shortening thereof to three months or less, even if the assessment was timely made, which of course would scarcely be contended. See In Re McClure (N. D. of Ga.) 21 Fed. (2nd) p. 538, Adv. Sheets Nov. 3, 1927; United States vs. Russell, et al., 22 Fed., (2nd) 249; Adv. Sheets Dec. 29, 1927.

It is also contended that there was never any assessment of the additional taxes within the period as extended, that is prior to June 16, 1925. However, the letter of June 10, 1925, with statement of the taxes claimed, quoted earlier in this opinion, states clearly that "in accordance with the provisions of 274 (d) of the Revenue Act of 1924, there has been assessed against you (the plaintiff) an income tax amounting to $11,282.15, for the taxable year 1918, the details of which are set forth in the attached statement." There also appears upon the original return as filed June 16, 1924, the notation, appearing to have been stamped upon its face in a square block, headed "Audited"; "Tax Liability increase $11,282.15;" signed "I. Graff," dated [fol. 29] Feb. 2nd (or 7th), 1925." I take it that this was all that was necessary to constitute an assessment as nothing has been pointed out to show that any particular form was required to accomplish that result. There is no denial that the letter of June 10th, 1925, was duly and timely received and it must be presumed that it was as it was offered in evidence by the plaintiff. It is true that the green slip,

also quoted and referred to hereinabove, bore date June 18, 1925, but this was in the nature of a demand or bill with warning to pay within ten days or the taxpayer would incur the statutory penalty of 1% a month. From this I think it is shown that there was an assessment prior to June 16, 1925.

My conclusion is that the plea of limitations cannot be sustained and there should be judgment rejecting plaintiff's demand. Appropriate indorsements showing the granting or refusing of requested findings of fact and rulings of law have been noted upon said motions.

A decree in accordance with these views may be presented, at which time all exceptions will be settled.

Thus done and signed at Monroe, Louisiana, on this the 4th day of February, A. D. 1928.

Ben C. Dawkins, U. S. D. J.

[fol. 30] In United States District Court

Judgment—Filed Feb. 24, 1928

This cause coming regularly on for trial, a jury being waived by agreement of counsel, trial being had by the Court and by reason of the law and the evidence being in favor of the defendant and against the plaintiff.

It is hereby ordered, adjudged and decreed that there be judgment against the plaintiff, Florsheim Brothers Dry Goods Co., Inc., and in favor of the defendant, United States of America, rejecting the demands of plaintiff at its costs.

Thus done, read and signed in open Court on this the 24 day of February, 1928.

Ben C. Dawkins, Judge.

In United States District Court

Plaintiff's Bill of Exceptions and Order Settling Same—Filed Feb. 24, 1928

Be it remembered that this cause, having been regularly assigned for trial, was called for trial before Hon. Ben C. Dawkins, Judge of said Court on the 10th day of November,

1927, both parties plaintiff and defendant announced ready for trial.

Whereupon counsel for plaintiff and for defendant filed in open Court their written stipulation that the case be tried by the Court without a jury in accordance with provi- [fol. 31] sions of Section 649 of the United States Revised Statutes, said stipulation being filed as part of the record in this cause.

Trial being proceeded with under said stipulation, counsel for plaintiff offered in evidence the petition filed by it together with the admissions made in the answer of the Government as respects the allegations of the petition.

Counsel for plaintiff then offered in evidence the tax return of the plaintiff filed March 15, 1918 with leave to substitute photostatic copy thereof, which document was admitted and filed in evidence as plaintiff's Exhibit 1.

Counsel for plaintiff then offered in evidence the second tax return of plaintiff received and filed in the office of the Collector June 16, 1918, with leave to substitute photostatic copy thereof, which document was admitted and filed in evidence as plaintiff's Exhibit 2.

Counsel for plaintiff then filed in evidence waiver of date March 1, 1925 with leave to substitute photostatic copy thereof, which document was admitted and filed in evidence as plaintiff's exhibit 3.

Counsel for plaintiff then offered in evidence notice from the Treasury Department at Washington of date June 10, 1925 with statement attached, which documents were filed in evidence as plaintiff's exhibit 4.

Counsel for plaintiff then offered in evidence demand for payment of tax of date June 18, 1925 with envelope attached, which documents were admitted and filed in evidence as plaintiff's exhibit 5.

Counsel for plaintiff then offered in evidence claim for refund filed with the proper board of date March 3, 1926, with leave to substitute photostatic copy thereof, which document was admitted and filed in evidence as plaintiff's exhibit 6.

[fol. 32] It was stipulated by agreement of counsel that payments of tax were transmitted by the plaintiff to the Government as dates alleged in the petition and received by the Government as of dates set forth in the answer; payments having been made under protest, which protest was based on the claim of plaintiff that the statutes of limita-

tion had run against the collection of the tax and were made under threat and in order to prevent execution of threat by the Tax Collector that petitioner's property would be seized and sold to satisfy the tax if not paid.

It was further stipulated by agreement of counsel that no other waiver was executed except that filed in evidence and marked plaintiff's Exhibit 3.

Counsel for the government offered no evidence, all the evidence offered in the case being that offered by the plaintiff, and the stipulations as hereinabove set forth.

At the conclusion of the trial and before submission of the case, counsel for plaintiff filed in Open Court written motion for directed verdict and judgment in favor of the plaintiff as prayed for in the petition, making all of the record and all of the evidence part of the motion, on the ground that the evidence proves conclusively plaintiff's right of recovery and that there is no substantial evidence in the record upon which a denial of its claim could be based, which motion was then and there by the Court referred to the merits to be considered by the Court as part of the record in the case.

The case was thereupon submitted upon the briefs to be filed, and the case taken under advisement.

In con-ection with, and as part of the brief filed by counsel for plaintiff, it was prayed that the Court make certain findings of fact to-wit:

[fol. 33] 1. That there is no proof in the record that a proper and legal assessment was made within the statutory period as extended by the agreement or waiver, and therefore the case is governed by Section 277 of the Revenue Act of 1924 and 1926 if either of these acts are held to apply in this case and the Government had no right to collect the tax at the time it was demanded and its payment enforced.

2. That the Court find that the agreement entered into between the Government and plaintiff fixed the period of time within which the tax for 1918 should be determined, assessed and collected not later than June 15, 1925; that such agreement became the law governing the collection of said tax as between the parties, exclusive of any subsequent act of Congress in derogation of plaintiff's rights fixed under said agrement; that the tax was not assessed and collected within said period and that at the time the tax was

demanded and paid the Government had no legal right to collect the same and it should be refunded.

3. That the Court find that Section 278 of the Revenue Act of 1924 does not apply to this case for the reason that said Act was not retroactive in effect; that no assessment was actually made within the statutory period (even accepting the theory of the Government that an assessment was made prior to June 16, 1925) which statutory period referred to in said Act referred to the period fixed by the statute and not to that fixed by convention, which contemplated and included the actual collection of the tax as well as its assessments within a stipulated period; and lastly, for the reason that this Section of the Act of 1924 had been amended by the Act of 1926 prior to the filing of this suit, which last named Act specifically declared its retroactivity.

[fol. 34] 4. That the Government had no right to collect the tax in question at the time its demand was made and enforced against the plaintiff, under the Revenue Act of 1926, if it is held to govern this case, for the reason that paragraph (d) of Section 278 of said Statute expressly holds, even in cases where the assessment has been made within the statutory period, that the collection of the tax cannot be enforced unless the proceedings are begun prior to the expiration of the period of collection agreed upon in writing by the Commissioner and taxpayer, which period in this case was fixed by such written agreement as on or before June 16, 1925, and accordingly the payment of the tax was illegally enforced subsequent to that date and should be refunded.

Thereafter on February 6, 1928, the Court handed down written opinion which is made part of the record in this cause, denying the contentions of the plaintiff, refusing to find the facts and law as requested in the motion and overruling the motion to direct verdict and judgment and ordering an entry of a decree rejecting plaintiff's demands.

To each of which rulings of the Court plaintiff timely excepted and reserved its bill of exceptions which is hereby settled and allowed on this February 24, 1928.

Ben C. Dawkins, United States District Judge.

Approved: —— ——, United States District Attorney.

[fol. 35] IN UNITED STATES DISTRICT COURT

PLAINTIFF'S ASSIGNMENT OF ERRORS—Filed Feb. 24, 1928

In the above numbered and entitled cause, comes now the plaintiff and respectfully shows that this Honorable Court has committed error herein to its prejudice in rejecting its demands and assigns as specification of such error that the Court erred in the following particulars:

1. In overruling the motion of plaintiff for the entry of judgment in its favor upon all of the evidence.

2. In finding that the evidence establishes that there was a legal assessment made prior to June 16, 1925, or at all, there being no evidence whatever in the record showing that the alleged assessment was actually made by the party in the form and manner prescribed by law.

3. In holding that the agreement or waiver was not the whole law governing the parties thereto with respect to the collection as well as assessment of taxes and holding that the agreement was made both with respect to the law as it then existed, and to the power of Congress to change it, thus giving the subsequent Act of Congress the effect of abrogating the rights of plaintiff established by contact between it and a duly authorized representative of the Government.

4. In holding that paragraph (d) of Section 278 of the Revenue Act of 1926 providing for the collection of taxes only if commenced prior to the expiration of any period for collection agreed upon by the Commissioner and taxpayer, did not bar collection in the case in question.

[fol. 36] Wherefore plaintiff prays that the judgment and decree herein be reversed.

Wise, Randolph, Rendall & Freyer, Attys. for Pltff.

IN UNITED STATES DISTRICT COURT

MOTION AND ORDER FOR APPEAL—Filed Feb. 24, 1928

In the above numbered and entitled cause now comes the plaintiff Florsheim Brothers Drygoods Company, Ltd., and

avers that the opinion and decree rendered herein, handed down and signed, are erroneous to the prejudice of appearer for the reasons set out in the assignment of errors hereinbefore filed, and appearer prays for an appeal to the United States Circuit Court of Appeals for the Fifth Circuit, and asks that the amount of the bond be fixed by the Court.

Further prays that on appeal that the judgment and decree herein be reversed, and for all other orders and decrees necessary for general relief.

Wise, Randolph, Rendall & Freyer, Attorneys for Plaintiff.

Order

The appeal herein is hereby granted and the bond is hereby fixed in the sum of $250.00 conditioned according to law.

Dated Shreveport, Louisiana, February 24, 1928.

Ben C. Dawkins, United States District Judge.

[fol. 37] Bond on Appeal for $250.00, approved and filed March 6, 1928, omitted in printing.

[fol. 38] In United States District Court

Note of Evidence—Filed Nov. 21, 1927

Note of evidence offered at the trial of the above numbered and entitled case, before Honorable Ben C. Dawkins, Judge of said Court, at Shreveport, Louisiana, on November the 10th, 1927.

Appearances: A. B. Freyer, of the law firm of Wise, Randolph, Randall and Freyer, attorneys for plaintiff; Hon. Philip H. Mecom, United States Atty., Attorney for defendant.

Stipulation waiving jury filed.

[fol. 39] Mr. Freyer: The plaintiff offers in evidence first the petition and the admission made in the answer as respects the allegations of the petition.

Document filed in evidence as offered.

Plaintiff also offers in evidence the return of the plaintiff filed on March 15, 1918, with leave to substitute photostatic copy thereof, document being marked Plaintiff 1.

Document filed in evidence as Plaintiff 1.

Plaintiff also offers in evidence the second tax return of the plaintiff filed in the office of the Collector of New Orleans June the 16th, 1918, with leave to substitute photostatic copy, marked Plaintiff 2.

Document filed in evidence as Plaintiff 2.

Plaintiff also offers in evidence the instrument called "waiver," dated March the 1st, 1924, leave to substitute a photostatic copy, marked Plaintiff's Exhibit 3.

Document filed in evidence as marked.

Plaintiff also offers and files in evidence a notice from the Treasury Department at Washington, dated June the 10th, 1925, addressed to the plaintiff, signed by Deputy Commissioner, together with the statement attached thereto, both of which instruments will be marked Plaintiff's Exhibit 4.

Document filed in evidence as Plaintiff's exhibit 4.

Plaintiff also offers and files in evidence a demand for tax, dated June the 18th, 1925, with the envelope in which it was received, showing the mail stamp at New Orleans of date June the 18th, and marked Plaintiff's Exhibit 5.

Document filed in evidence as Plaintiff's Exhibit 5.

[fol. 40] Plaintiff also offers in evidence the claim for refund filed with the proper board, filed March the 3rd, 1926, with leave to substitute photostatic copy, marked Plaintiff's Exhibit 6.

Document filed in evidence as Plaintiff's Exhibit 6.

It is stipulated and agreed by counsel that the payments of the tax, principal and interest, were transmitted by the plaintiff to the government as of the date alleged in the petition and received in due course as shown by the dates stated in the answer of the government, payments having been made under protest, the protest being based on the

claim of the plaintiff that the statute of limitation had run against the collection of the tax, and under the threat and in order to prevent execution of the threat by the Tax Collector that petitioner's property would be seized and sold to satisfy said tax, if the tax had not been paid.

The plaintiff thereupon rested.

It is stipulated and agreed that no other waiver was executed except that which has been heretofore offered.

The United States Attorney announcing that he had no evidence to offer, the evidence was closed.

Motion for a directed verdict was then filed and the case submitted on briefs to be filed within two weeks.

[fol. 41] Certificate to foregoing paper omitted in printing.

IN UNITED STATES DISTRICT COURT

[Title omitted]

MINUTES OF THE COURT

June 21, 1927.

Upon motion of the United States Attorney,

It was ordered that this case be fixed for trial Tuesday, November 1st, 1927.

It was ordered that Court adjourn until tomorrow morning at ten o'clock.

[fol. 42] [Title omitted]

Stipulation waiving jury filed, Whereupon this case came on for trial before the Court, the plaintiff being represented by its attorney, Mr. A. B. Freyer, and the Government being represented by the United States Attorney. Documentary evidence on behalf of the plaintiff was filed, and the Government announced that it had no evidence. Whereupon motion for directed verdict was filed by the plaintiff, and the evidence being closed, the case was submitted on briefs to be filed within two weeks.

Ordered that Court adjourn.

[Title omitted]

On motion of Mr. Philip H. Mecom, United States Attorney, counsel for the Defendant herein, Judgment in accordance with a previous opinion of the Court, handed down was read, signed and filed as now recorded in judgment record, Vol. 9 folio 467.

[fol. 43] On motion of Mr. A. B. Freyer, of counsel for the plaintiff herein Plaintiff's Bill of Exceptions was read, signed and filed. Counsel for Plaintiff then tendered and filed their assignment of errors; motion and order for appeal, and notice of appeal, and moved that service and citation of appeal be made upon the Hon. U. S. Attorney, for the Western District of Louisiana.

Ordered that Court adjourn.

In United States District Court

Præcipe for Transcript of Record—Filed Feb. 28, 1928

The Clerk will please proceed to make up the transcript in the above numbered and entitled cause, including therein the following:

1. Plaintiff's Petition;
2. Citation and return thereon;
3. Affidavit of Counsel for plaintiff that copy of petition was mailed by registered mail to the Attorney General of the United States at Washington;
4. Defendant's Answer;
5. Stipulation waiving jury;
6. Motion of plaintiff for directed verdict and judgment;
7. Special request for finding of law and fact attached to plaintiff's brief;
8. Opinion of the District Judge;
9. Final Decree;

[fol. 44] 10. Bill of exceptions together with documentary evidence offered by the plaintiff, being Plaintiff's Exhibit-Nos. 1 to 6 inclusive;

11. Plaintiff's assignment of errors;
12. Plaintiff's petition for appeal and order allowing same and fixing bond;

13. Plaintiff's notice of appeal and return showing service thereof;
14. Bond of appeal with approval thereon;
15. Citation of appeal and return showing service thereon;
16. Stipulation to transmit certain exhibit in original;
17. Stipulation and agreements of counsel as contained in stenographer's note of evidence;
18. This præcipe, and
19. Certificate of Clerk.

Wise, Randolph, Rendall & Freyer, Attys. for Plaintiff.

I hereby certify that a true copy of the foregoing præcipe was this day mailed to Philip H. Mecom, Esq., United States Attorney, the attorney for the defendant, Post Office Building, Shreveport, Louisiana.

Shreveport, Louisiana, February 27th, 1928.

A. B. Freyer, of Counsel for Plaintiff.

(Here follow exhibits, side folios 44-1 to 44-14, inc.)

[fol. 45] EXHIBIT P-3

United States of America, Treasury Department

November 23, 1926.

Pursuant to Section 882 of the Revised Statutes, I hereby certify that the annexed is a true copy of Income and Profits Tax Waiver for 1918, dated March 1, 1924, filed by Seymore L. Florsheim, Pres., Florsheim Bros. Dry Goods Company, Ltd., Shreveport, Louisiana, on file in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury.

(Signed) F. A. Birgfeld, Chief Clerk. HRS. (Seal.)

N. K. F. A. W. G. Bo CFH. M.

P 1
82

United States of America.

Treasury Department,

NOV 10 1927

November 23, 1926

Pursuant to Section 882 of the Revised Statutes I hereby certify that the annexed are true copies of Corporation Income and Profits Tax Return for 1918 (with schedules attached, minus balance sheets mentioned therein), executed June 14, 1919, filed by The Flersheim Bros. Dry Goods Company, Ltd., Shreveport, Louisiana; "Tentative" Corporation Income and Profits Taxes Return for 1918, filed by The Flersheim Bros. Dry Goods Company, Ltd., on file in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury

Assistant Secretary of the Treasury

1212-1

-NT-3/1948-

Page 1—SUMMARY

Form 1120—UNITED STATES INTERNAL REVENUE SERVICE

CORPORATION INCOME AND PROFITS TAX RETURN

FOR CALENDAR YEAR 1918

or

Fiscal Period begun _____, and ended _____, 1918

4173

(Print plainly corporation's name and principal place of business)

CARL

AUDITED

1282-16 return

CLOSED

QUALITY

TAX LIABILITY REDUCED

BASIS IF A

CLAIM

NUMBER

LIST

SCHEDULE I—NET INCOME.

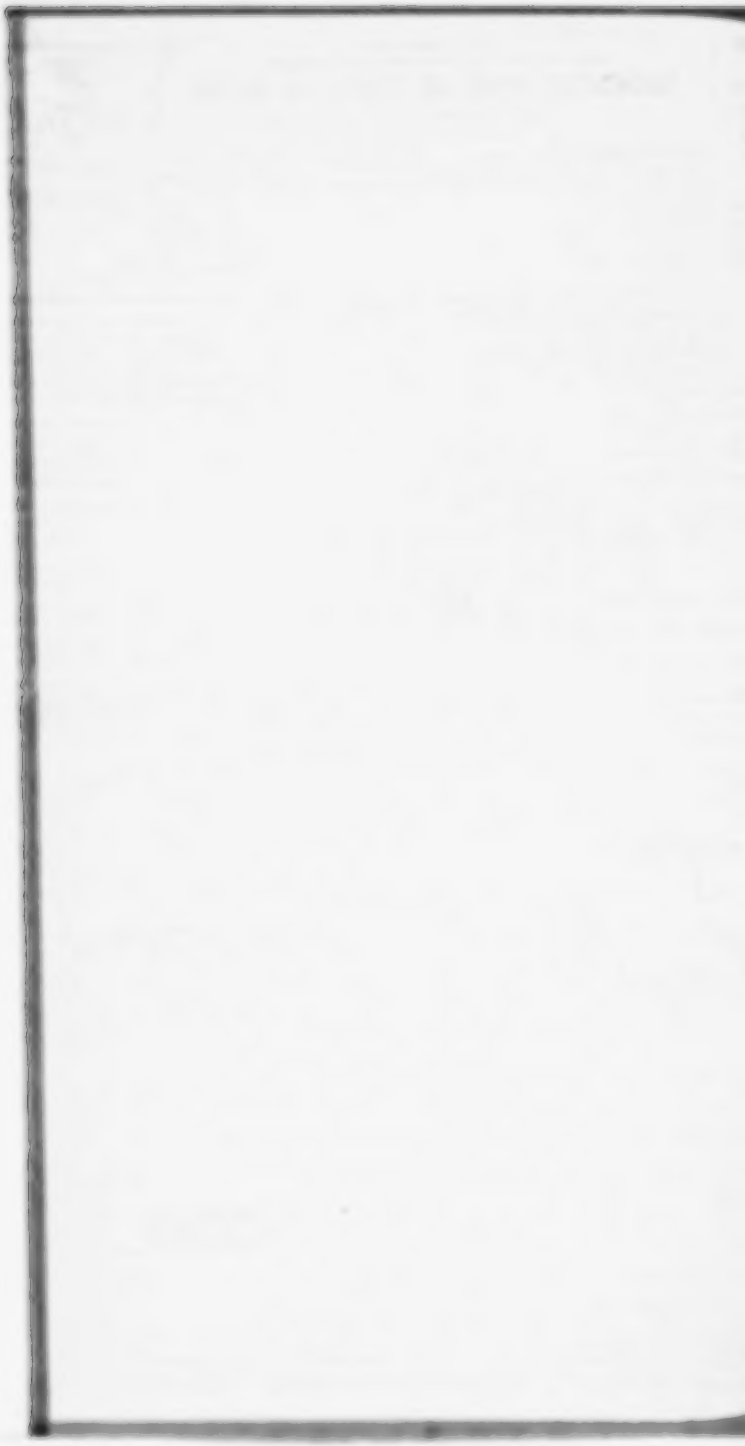
SCHEDULE II. INVESTED CAPITAL.

SCHEDULE III—EXCESS-PROFITS AND WAR-PROFITS CREDITS.

SCHEDULE IV. COMPUTATION OF TAXES.

INCOME TAX.

ADJUSTMENT OF TAX FOR FISCAL YEAR ENDED IN 1918.



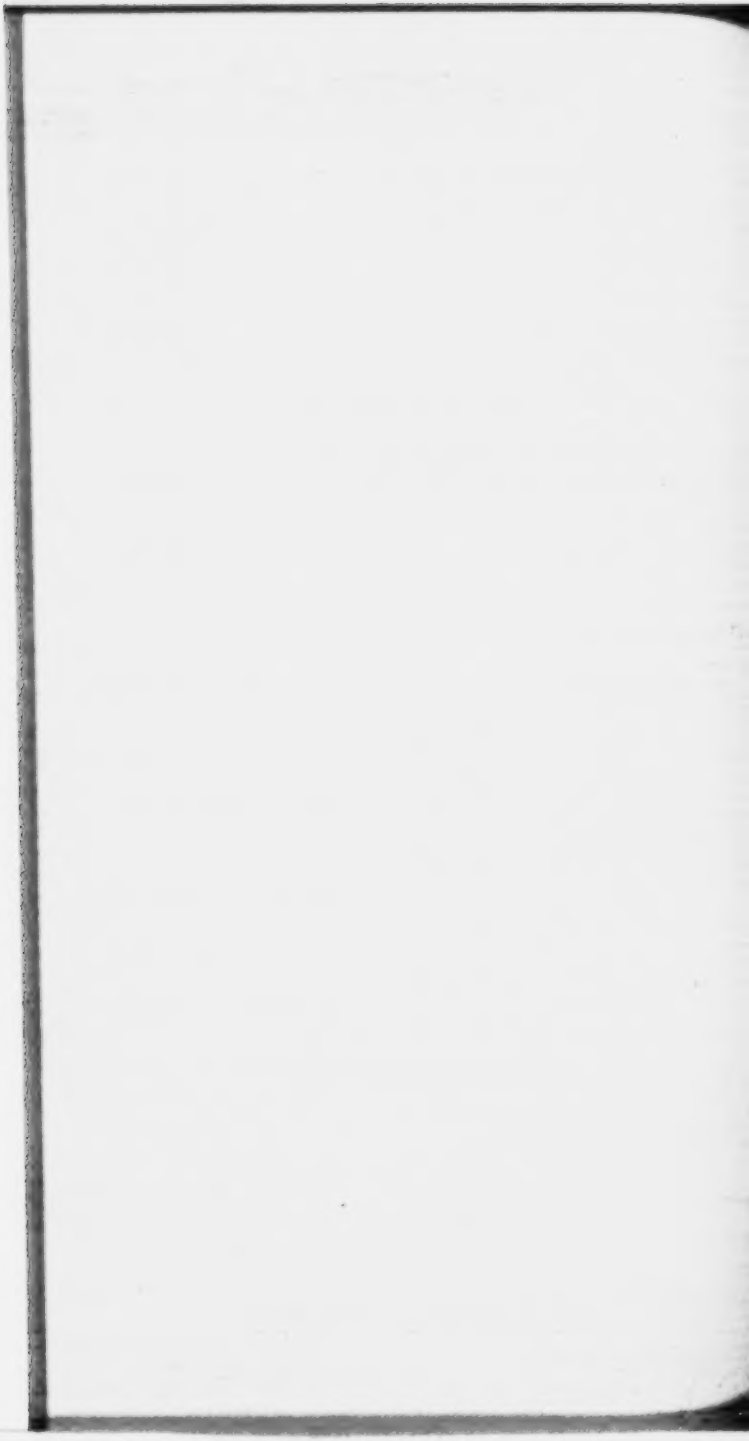
Page 3 – Income Statistics

SCHEDULE A – TAXABLE NET INCOME

SCHEDULE B – RECONCILIATION OF NET PROFIT PER BOOKS WITH TAXABLE NET INCOME

SCHEDULE C – BALANCE SHEETS

SCHEDULE D – ANALYSIS OF SURPLUS ACCOUNT



SCHEDULES SUPPORTING SCHEDULE A

6275494

The schedules called for below should be prepared and firmly stapled to this return. Designate each schedule with the number of the item in Schedule A which it explains. Make schedules on paper of uniform size as far as practicable. In the space provided for the purpose on page 6 list all schedules attached to this return, giving the title and schedule number of each.

SCHEDULE A2: COST OF GOODS SOLD, EXCLUSIVE OF EXPENSES, REPAIRS, AND OTHER ITEMS CALLED FOR SEPARATELY.

In support of Item 2, Schedule A, corporations engaged in manufacturing or trading must in all cases submit an analysis, in reasonable detail, of the cost of goods sold. This account should ordinarily include the following items but should not include any items now called for separately in Schedule A:

1. Inventory at beginning of period (to be reconciled with balance sheet).
2. Purchases during period.
3. Labor and wages ordinarily charged to manufacturing cost on the corporation's books, showing the principal items separately.
4. Other expenses ordinarily charged to manufacturing cost on the corporation's books. (State separately large or unusual items.)
5. Total.

Deduct:

6. Inventories at close of period (to be reconciled with balance sheet).
7. Cost of goods sold. (Item 5 less Item 6.)

Note.—Inventories should be valued at (a) cost or (b) cost or market, whichever is low, provided, however, that whichever basis was adopted by a taxpayer for the year to year 1917 must be consistently adhered upon application to the Commissioner consent is granted to change. If basis (b) is used it must be applied to each item in an inventory and not to a part only. An inventory should be recorded in a legible manner, properly computed and summarized, and should be preserved as a part of the accounting records of the taxpayer. (See Articles 1581 to 1585 of Regulations No. 45.)

Has any basis of the above-mentioned basis for valuing inventories is used in this return? Market Value

SCHEDULE A3: GROSS INCOME FROM OPERATIONS OTHER THAN TRADING OR MANUFACTURING, LESS ALLOWANCES.

Submit a schedule showing the nature and amount of the principal items included in Item 3, Schedule A.

Life insurance companies should enter on Item 3, Schedule A, the total premiums and policy dividends less such portion thereof as has been paid back or credited to, or retained as an investment of premiums of, such policyholders within the taxable year. (See Articles 448 and 547 of Regulations 45.)

Mutual marine insurance companies should report on Item 3, Schedule A, the gross premiums earned and received by them less amounts paid for reinsurance.

SCHEDULE A4: INTEREST ON OBLIGATIONS OF UNITED STATES OR ITS POSSESSIONS NOT EXEMPT.

Enter in table below the maximum amount of Liberty Bonds and other obligations of the United States owned since September 24, 1917 (par value) held at any one time, from this account was derived during the taxable year:

1. Name of issue	2. Number or amount owned	3. Number of days owned
(a) First Liberty Loan converted bonds (not including Liberty Loan converted bonds owned January 1, 1917)		
(b) First Liberty Loan converted bonds owned January 1, 1917		
(c) First Liberty Loan converted bonds		
(d) First Liberty Loan		
(e) Other obligations (see Regulations 45, Art. 549)		

Note.—The exemption as to Items (a) and (b) maximum $45,000 is limited to one and one half times the amount of the bonds of the Fourth Liberty Loan originally subscribed for and still held. State that amount here $

In order to ascertain the amount to be entered on Item 4, Schedule A, refer first to the table above.

If the amount entered in column 2 of the table for any class of obligations exceeds the amount entered in the same class of obligations on which any part of the income entered in column 3), attach hereto a schedule showing separately for each class of obligation:

(a) Class of obligation.

(b) Number of days of each period during which the corporation's holdings of that class of obligation were entered into.

(c) Amount of each class of obligation held by the corporation during each such period.

(d) Amount by which the amount entered in column (c) exceeds the maximum exemption for that class of obligation.

(e) Rate of tax due.

(f) Interest derived from each amount of principal stated in column (d).

For the purpose of showing changes in holdings and applying the exemption, claims need not be taken jointly, but for the purpose of computing the taxable interest they must be entered separately.

Enter on Item 4, Schedule A, the total of column (f) for all classes of obligations.

Submit also a statement showing the amount of interest derived from bonds and other obligations of the United States and its possessions, exclusive of those described in the table above.

SCHEDULE A5: INTEREST FROM OTHER SOURCES.

Submit a schedule showing the source, nature, and amount of the principal items included herein, the minor items being grouped in one figure. The total of the schedule should be entered on Item 5, Schedule A.

The interest on foreign bonds submit a schedule showing (a) name of country; (b) kind of obligations (whether sovereign, state, municipal, or corporate obligations); (c) amount of principal; and (d) amount of interest.

SCHEDULE A6: DIVIDENDS ON STOCK OF FOREIGN CORPORATIONS.

Submit a schedule showing for each item of corporation: (a) country in which organized; (b) total par value of stock held, and (c) amount of dividends.

SCHEDULE A10: GROSS INCOME FROM ALL OTHER SOURCES EXCEPT DIVIDENDS not including any amount in respect of capital assets or miscellaneous considerations.

Submit a schedule showing the source, nature, and amount of the principal items included herein, the minor items being grouped in one figure. The total of the schedule should be entered on Item 10, Schedule A.

SCHEDULE A11: ORDINARY AND NECESSARY EXPENSES (except amounts allowable for separately in Schedule A and not including cost or value of [illegible] miscellaneous investments sold during taxable year).

Submit a schedule showing the nature and amount of the principal items included

Insurance companies should state separately in Schedule A11 (a) the net amount required by law to be made within the taxable year to reserve funds (including in the case of assessment insurance companies the actual deposit of same with State or Territorial officers pursuant to law or additions to guarantee or reserve funds; and (b) the total of sums other than dividends paid within the year on policy and annuity contracts.

Corporations issuing policies covering life, health, and accident insurance combined in one policy issued on the monthly premium payment plan continuing for life and not subject to cancellation should report in Schedule A12 such part of the net addition (as required by law) made within the taxable year to reserve funds as is required for the protection of the holders of such policies.

Mutual marine insurance companies should report in Schedule A11 amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment and the payment thereof.

Mutual insurance companies (other than mutual life and mutual marine insurance companies) that require their members to make premium deposits to provide for loss and expense should report in Schedule A11 the amount of premium deposits returned to those policyholders and the amount of premium deposits retained for the payment of losses, expenses, and reinsurance reserves (unless deducted elsewhere in Schedule A).

SCHEDULE A12: COMPENSATION OF OFFICERS.

Submit a schedule showing for each officer (1) name, (2) duties, (3) time devoted to such duties, (4) shares of stock owned, (5) total annual compensation for the years 1916, 1917, and 1918, and (6) amount for increase.

SCHEDULE A14: REPAIRS (including labor, supplies, overhead, and other items properly chargeable to repairs).

Submit a schedule showing the nature and amount of the principal items included in Item 14, Schedule A.

Incidental repairs, which do not add to the value or appreciably prolong the life of property, are deductible as expenses. Expenditures for new buildings or for permanent improvements or betterments which increase the value of the property are chargeable to capital account. Expenditures for restoring or replacing property are not deductible under this or any other item of the return. Such expenditures are chargeable to capital account or to depreciation reserves, depending on the treatment of depreciation on the books of the taxpayer.

SCHEDULE A15: EXHAUSTION, WEAR AND TEAR (including obsolescence).

Submit a voluntary schedule containing, in the most practicable form, substantially the following information:

1. A classification of depreciable assets subdivided on the basis of (a) character, (b) term of useful life.
2. The fair market value of such assets March 1, 1913, if acquired before that date.
3. The cost of such assets if acquired after February 28, 1913.
4. The estimated life or term of reasonable usefulness of such assets from date acquired or from March 1, 1913, as the case requires. Give reasons for your conclusions.
5. For each class of assets—
   (a) The total amount of depreciation from March 1, 1913, to the beginning of the taxable year.
   (b) The total amount of depreciation (exhaustion, wear and tear, including obsolescence) claimed for the taxable year.
6. A reconciliation of all figures shown in this schedule with corresponding figures reflected in the balance sheets.

SCHEDULE A19: AMORTIZATION OF WAR FACILITIES.

If amortization is to facilitate is claimed the taxpayer is required to submit with this return the certificates and schedules called for in Articles 141 to 147 of Regulations 45.

SCHEDULES A23 and A24: PROFIT OR LOSS ON SALES OF CAPITAL ASSETS and miscellaneous transactions, and losses sustained during the taxable year from fire, storms, or other casualty, or from theft, not compensated for by insurance or otherwise.

Submit a schedule or schedules setting forth for each sale of capital assets or miscellaneous transaction and for each loss during the taxable year the information required below:

1. Description of property sold or of property in respect of which a loss is claimed.
2. Date acquired.
3. Fair market price or value on March 1, 1913, if acquired before that date, or cost if acquired after February 28, 1913.
4. Cost of improvements, if any, since February 28, 1913, or since date of acquisition, if acquired after February 28, 1913.
5. Total of Items 3 and 4.

Less—

6. Depreciation or depletion of property subject thereto—
   (a) Per books.
   (b) Accrued but not on books.
7. Salvage value, if any, of property on which a loss is claimed.
8. Amount of insurance or other recovery on property, if any.
9. Proceeds of sale or cash value of property received in exchange (for transactions falling in Item 23, Schedule A) (see Note).
10. Total of Items 6 to 9, inclusive.
11. Profit or loss.
12. Carried to [illegible] for losses falling in Item 24, Schedule A).

Note.—Submit such data as is necessary in arriving at the cash value of property received in exchange for other property.

COMPENSATION AT RATE OF $5,000 OR MORE PER ANNUM.

Submit a schedule showing for each employee (if a shareholder of the corporation), whose compensation is at the rate of $5,000 or more per annum, facts similar to those called for in Schedule A12.

WORKING PAPERS.

Every corporation should preserve, available for inspection by a revenue officer, working papers showing—

1. The balance in each account on the corporation's books that was used in preparing Schedule A.
2. The amount subjected to or in each such balance on account of each class of nontaxable income, allowable deductions, and other adjustments indicated on Schedule B, with a reference to the number of the item in Schedule B in which such amount or deduction was included.
3. The [illegible] such balances, and to show the amount included in [illegible] Schedule A, with a reference to the number of the item in Schedule A

SCHEDULE E—CAPITAL, SURPLUS, AND UNDIVIDED PROFITS AS SHOWN BY BOOKS BEFORE ANY ADJUSTMENTS ARE MADE THEREIN.

36. Par stock outstanding at the end of the preceding taxable year should be shown in the schedule to the extent that it is paid up. If stock or shares were issued at a par value or without par value, the amount should reflect the amounts on the books that were entered at the close of the preceding taxable year.

The term should include paid in surplus per books at the end of the preceding year. If any amount is claimed under Section 326(a)(2) of the Revenue Act of 1918 or Article 849 of Regulations 45 the amount claimed should be entered under Item 1, page 5, and not in this schedule.

37. Reserves which represent accumulated earnings and were not accumulated through deductions made in computing net income as returned in previous years may, if properly explained, be entered on line 7. Such entries should be identified and if necessary reconciled with balance-sheet reserves.

38. The cost (or book value if different from cost) of treasury stock held at the end of the preceding taxable year should be deducted on line 9 of the par value of such stock is included in the amount entered on line 4. Treasury stock includes all stock reacquired by the corporation and not cancelled, regardless of the method of the acquisition.

Items	1917	1918	1919	Taxable Year
1. Par stock paid up and actually outstanding at the close of the taxable year				
2. Preferred				
3. Second preferred				
4. Common	150 000 00	150 000 00	150 000 00	150 000 00
5. Total	150 000 00	150 000 00	150 000 00	150 000 00
Undivided profits:				
6. Paid in surplus				
7. Earned surplus and undivided profits	182 954 76	169 905 81	123 630 49	125 882 43
8. Reserves, minimum to which are not deductible in computing net income (to be reconciled with balance-sheet items)				
9. Gross assets or Items 4, 5, 6, and 7	332 954 76	319 905 81	273 630 49	275 882 43
10. Deduct cost (treasury stock (or book value if different from cost), if any is included above or outstanding				
11. Net worth (Item 9 minus Item 10)	332 954 76	319 905 81	273 630 49	275 882 43

SCHEDULE F—ADJUSTMENTS BY WAY OF ADDITIONS.

F1. If an addition to invested capital is claimed in Item 1, Schedule F, submit a statement showing (a) the kind of property, (b) the year in which it was paid in, (c) from whom paid, explaining his relationship to the corporation, (d) the actual cash value of such property at the date when paid in, (e) the par value of stock or shares issued therefor and the amount at which such property is entered in the accounts, and (f) the basis upon which the cash value of the property was determined and the date when such determination was made.

F2. If an addition to invested capital is claimed in Item 2, Schedule F, submit a statement showing (a) the kind of property, (b) the year in which it was acquired, (c) its cost, (d) the amount of depreciation sustained on such property from the date of acquisition to the beginning of the taxable year. State also whether such item ought to be restored wholly and or untile at the beginning of the taxable year. Were these expenditures, when made, written off in lieu of depreciation? ——. If so, explain what adjustments have been made to provide for depreciation, in view of the proposed restoration to surplus.

F3. If any addition to invested capital is claimed in Item 3, Schedule F, state specifically the amount of depreciation written off each year in the books of the company, and the amount allowed as a deduction in computing net income.

F4. If any assets of the trade or business in existence during both the taxable year and any previous year are included in the invested capital for the taxable year but not for such previous year, or are valued on a different basis in computing the invested capital for the taxable year and such previous year, entries should be made in the schedule adjusting the invested capital for each previous year affected so as to value such assets upon the same basis in the previous period as in the taxable year.

Items	1917	1918	1919	Taxable Year
1. Net value of tangible property (clearly and substantially in excess of par or stated value) paid for stock or other consideration paid in connection therewith (Art. 326)				
2. Additions to surplus (Articles 840 to 842)				
3. Deductions charged to the accounts of the corporation but not allowable as a deduction in income tax returns				
4. Amount of valuation of assets in existence both during taxable year and in previous period (Article 934)				
5. Total				

SCHEDULE G—ADJUSTMENTS BY WAY OF DEDUCTIONS.

1. Is any patent, copyright, secret process or formula, good will, trade-mark, trade brand, franchise, or other similar intangible property, paid in for stock, entered on the books of the corporation at a value in excess of its actual cash value when paid in? No

If so, what was the par value of the stock issued therefor? No. In the aggregate of such property prior to March 3, 1917? ——. In the case of such property acquired after March 3, 1917, entered on the books at a value in excess of 25 per cent of the par value of the stock outstanding at the beginning of the taxable year? No

If the answer to any of the foregoing questions is "yes," submit a statement showing fully with respect to such assets acquired (1) before March 3, 1917, and (2) on or after that date: (a) Date of acquisition; (b) cash value at that date, with a complete explanation of the basis upon which such cash value was determined; (c) par value of the stock issued therefor; (d) par value of total stock outstanding March 3, 1917; (e) par value of such stock outstanding at the beginning of the taxable year; (f) the value at which assets are entered on the books of the corporation.

If the intangibles were acquired before March 3, 1917, the amount by which (f) exceeds 25 per cent of (d), or 25 per cent of (c), whichever is lowest, must be restored as a dividend, if, for the taxable year and for each year of the present period that is affected.

If the intangibles were acquired on or after March 3, 1917, the amount by which the value (f) relating to such intangibles exceeds (b) or (c) relating thereto, or 25 per cent of whichever is lowest, must be included in Item 1, Schedule G, for the taxable year; and, if intangibles were acquired before March 3, 1917, and also on or after that date, provision shall be made on the basis of the amount included in invested capital for the aggregate intangibles shall not exceed 25 per cent of the par value of the total stock outstanding at the beginning of the taxable year.

2. If the stock of the corporation was issued at a nominal value or without par value for the purpose of the computation under Item 1 the par value shall be deemed to be the market value as of the date or dates of issue. The aggregate to value so determined must not exceed 25 per cent of the par value of the total stock outstanding on March 3, 1917, or at the beginning of the taxable year, shall be the limit to be allowed in the computation.

3. Is any tangible property, paid in for stock, entered on the books of the corporation at a value in excess of its actual cash value when received? No In excess of the par value of the stock paid therefor? No

If the answer to either of the foregoing questions is "yes," submit a statement showing (a) kind of property, (b) when acquired, (c) par value of the stock paid therefor; (d) actual cash value of the property when paid in; (e) the basis on which that value was determined; (f) the amount at which the property is entered on the corporation's books; and (g) account by which the excess of the allowable value under section 326 (a) (2) of the Revenue Act of 1918. Enter the amount as Item 2, Schedule G, for the taxable year and for each of the preceding period that is affected.

4. (a) Was any stock issued by the corporation now returned as a gift or for a consideration substantially less than its par value? No (b) If so, what was the total par value of such stock? $ —— (c) What was the consideration paid for the return of such stock? —— (d) What amount of cash or its equivalent was derived from the issue of such stock? —— (e) What entries were made in the accounts to evidence such issue?

The excess of (b) over (d) must be entered as Item 3, Schedule G, for the taxable year and for each year of the present period that is affected. However, no deduction is necessary if adequate adjustment has been made under Item F of this schedule.

C4. Was the business reorganized or consolidated or was its ownership changed or was there a change in ownership of property after March 3, 1917? No If so, answer the following questions:

(a) Did an interest of 50 per cent or more in the business or in the property, which changed ownership remain in the control of the same persons, corporations, associations, or partnerships, or of any of them? ——

(b) Were any of the assets entered on the books of the corporation making this return at a higher value than on the books of its predecessor? ——

(c) If such previous owner was not a corporation attach a statement showing (1) the cost of acquisition to the previous owner of any asset so transferred or received; (2) expenditures subsequent to that date for betterment or development, not deducted as an expense or otherwise since March 1, 1913, by such previous owner; (3) the allowance for depreciation, depletion, or impairment since the date of acquisition by such previous owner.

(d) If all, or substantially all, of the property was acquired from a corporation during the taxable year attach hereto balance sheets of such predecessor corporation as of the beginning of the taxable year and as of the date immediately prior to the transfer of the property to the corporation making this return, and also a balance sheet or statement of the corporation making this return showing the values at which such property received or transferred were entered on the books.

The increase in book value of any property acquired by reorganization, consolidation, or change of ownership, over the amount allowable to the predecessor corporation or over the amount as computed under (c) of the previous owner was not a corporation, must be deducted from the invested capital for the taxable year as Item 4, Schedule G.

C5. Is any property (including physical property, securities, and intangible property) paid for with cash or with other tangible property entered on the books of the corporation at a value in excess of the amount of cash paid therefor or the actual cash value of the tangible property paid therefor? —— If so, submit a statement showing (a) kind of property, (b) amount of cash paid therefor; (c) actual cash value of other tangible property paid therefor; (d) how that value was determined; (e) value at which the property is entered on the books of the corporation; and (f) excess of value over cash paid. This excess must be entered as Item 5, Schedule G, for the taxable year and for each year of the present period that is affected.

C6. Has adequate provision been made in the regular accounts of the company for (a) losses by fire? Yes; (b) depreciation? No; (c) obsolescence? No

(d) depletion of mineral deposits, timber supplies, and the like? ——

If adequate charge has not been made for depreciation, depletion, obsolescence, and other losses, and the value of the property has not been maintained by replacements that have been charged to expense, proper additional charges therefor must be computed for all years in which they were not made on the books, and the total amount of such charges must be entered as Item 6, Schedule G, for the taxable year (and for each year of the present period that was affected) and deducted in arriving at the corporate and undivided profits.

Page 8—Invested Capital Schedules—Continued

SCHEDULE I—ADJUSTMENTS BY WAY OF DEDUCTIONS (Concluded). 6275491

Item	1920	1921	1922	Taxable Year
Dividends declared (cash, stock, or property) out of earnings or profits for taxable year				
Amount of taxable property paid in for stock				
Interest on the expenditure on gift, etc.				
Taxes assessed in respect of income				
Other deductions				
Total deductions				
Net income (or deficit)	Sheriff's Officers—Marcus Hook Shipbuilding Co.	12610V 24	1410097 19	153419 -

SCHEDULE H—CHANGES IN INVESTED CAPITAL DURING TAXABLE YEAR.

Items to be entered: Capital during the taxable year ordinarily arises in one or more of the following ways:

1. Additions by reason of the sale of capital stock or the issue of capital stock for cash or other assets.
2. Liquidation of part of the capital by retirement of stock or purchase of treasury stock not out of current earnings.
3. Payment of cash dividends out of earnings of prior years.
4. Deduction of the amount of Federal income and excess profits taxes for the previous year.
5. Payment of assessments by stockholders, or creation of paid-in surplus by contribution of stockholders.
6. Sale of property for less than its value (as fixed by sales and bids for distribution, or otherwise) whether such loss is realized or is a deduction.
7. Dividends paid out of profits of prior years but not dividends paid out of earnings or profits of the taxable year. Any distribution made during the first 60 days of the taxable year is to be treated as having been made from earnings or profits accumulated during the taxable year, but any distribution made during the remainder of the taxable year shall be deemed to have been made from the profits for that year to the extent that such profits were sufficient. (See Article 1441.)
8. If stock is issued for cash, the actual cash received (but not the amount of the capital stock) should be entered in this column. Amounts (other than cash) paid in for stock must be valued in accordance with section 326 (a) (2) of the Revenue Act of 1918. (See Article 848.)
9. The amount of Federal income and excess profits taxes payable should be deducted as of the date when due and payable whether reserves have been set up on the books or not. (See Article 848.)
10. If capital stock of the corporation is recapitalized but not paid for out of current profits, the cost of such stock should be deducted from invested capital.
11. The date called for in column 1 (a) should be given for all transactions, except that columns 8 and 9 are applicable only to the issue or recapitalization of the corporation's stock.
12. In Column 6 enter the number of days remaining in the taxable year (including the date of change).
13. The net changes, if not in accordance with the increases or decreases reflected in the balance sheets, should be fully reconciled therewith.

1. Nature or Amounts and Transactions	2. Date.	3. Amount of Capital Paid in for Stock.	4. Paid-in Cash, Stock, Paid-in Surplus.	5. Amount of Cash or Cash Value Actually Received on Paid Ins.	6. Number of Days Outstanding.	7. Addition (Column 5 x Column 6 / Number of days in taxable year)
Dividend Paid	Jan 1 1918			1200000		

SCHEDULE J—CHANGES IN INVESTED CAPITAL DURING PREWAR YEARS.

(Compute the net addition or reduction separately for each year. See instructions under Schedule H.)

1. Nature or Amounts and Transactions	2. Date.	3. Amount of Capital Paid in for Stock.	4. Paid-in Cash, Stock, Paid-in Surplus.	5. Amount of Cash or Cash Value Actually Received on Paid Ins.	6. No. of Days Outstanding.	7. Addition (Column 5 x column 6 / Number of days in taxable year)
Dividend Paid	June 4 1920			2250000		
" "	June 1 1921			2250000		
" "	June 1 1922			2250000		

SCHEDULE K—CHANGES IN INVESTED CAPITAL FROM END OF PREWAR PERIOD TO BEGINNING OF TAXABLE YEAR, NOT SHOWN IN SCHEDULE H.

(See instructions under Schedule H, as far as applicable.)

1. Nature or Amounts and Transactions	2. Date.	3. Amount of Capital Paid in for Stock.	4. Paid-in Cash, Stock, Paid-in Surplus.	5. Amount of Cash or Cash Value Actually Received on Paid Ins.
Dividend Paid	June 1 1914			2250000
" Extra	June 24 1914			1500000
Int. on Loss "	June 30 1914			750000
Dividend Paid	Jan 1 1915			1243509
	Jan 1 1915			900000
	Jan 1, 1917			900000

SCHEDULE L—INADMISSIBLE ASSETS.

$ 6 2750 49 91

...the corporation any inadmissible assets (i. e., stocks, bonds, and other obligations on...

...obligations of the United States, the income for which is not taxable)? _____

...stock, furnish a statement showing for 1911, 1912, 1913, and the taxable year, ...the facts called for in Items (a) to (j) of this schedule.

...income from such assets or assets in part of gross or profit from the sale or other ...part, or all or part of the interest derived from such assets is in effect ...in the net income because of the limitation on the deduction of interest under ...(d) (2) of the Revenue Act of 1916, then a corresponding part of the capital ...such assets is deemed an admissible asset. In such case, set forth in detail ...The value of such of the inadmissible assets held by the corporation at the ...the capital invested therein which is deemed an admissible asset.

...purpose of this schedule, inadmissible assets shall be valued at cost of acquisi... part of the taxpayer has in prior years been allowed a deduction on account ...to the market value of securities, such assets shall be valued at cost less the deduc...

...Admissible assets shall be valued as provided in Sections 328, 329, and 331 ...Act of 1916 and Articles 931–936, 941–946, and 951 of Regulations 69. The ...amount of assets of each kind held during any year may ordinarily be determined ...ing by 2 the sum of the amount of such assets held at the beginning of the year ...and the amount held at the end of the year. In such case the amounts of admissible assets may best be determined from (1) the balance sheet as of the beginning of the year adjusted with respect to the items in Schedules F and G, and (2) the balance sheet as of the end of the year correspondingly adjusted. But if at any time during the year a substantial change has taken place in the amount of such assets, the average amount must be determined as provided in Article 932 of Regulations 69. In such case there should be entered—

(a) The computation and its amount.

State also—

(c) Amount of inadmissible assets held at beginning of the year.

(d) Amount of inadmissible assets held at end of year.

(e) Average amount of inadmissible assets held during year.

(f) Amount of admissible assets held at beginning of the year.

(g) Amount of admissible assets held at end of year.

(h) Average amount of admissible assets held during year.

(i) Sum of (e) plus (h).

(j) Percentage which (e) is of (i).

This percentage (j) for each year should be applied to the figures for that year appearing on line 7, Schedule H, in order to obtain the deduction on account of inadmissible assets which should be entered on line 8, Schedule H.

QUESTIONS.

KIND OF BUSINESS.

Explain below the nature of the corporation's business in sufficient detail to show ...the following general classes of its various activities:

(1) Agricultural and related industries, including fishing. (2) mining, quarrying, and ...extraction and related industries. (3) manufacturing. (4) construction. (5) trading. (6) transportation. (7) other services. (8) banking and insurance.

If the business falls in any of the classes from 1 to 8, state the special product or ...be handled; if in class 6, state whether wholesale or retail, or both. If in class 6, state ...rail, water, or other, whether general or local, and the special commodities (if ...the year. If in class 7, state the special commodities at end (if any) or the special ...year. If in class 8, state in detail the kind of service rendered; if in class 9, state ...kind of banking or insurance engaged in.

In all cases state whether the corporation is or is not principal (using its own capital) ...and broker (as commission) or as both.

This believe Wholesale Dry Goods

Notions & Furnishing Goods

Subsidiary businesses, if any _____

OTHER CONCERNS IN SAME BUSINESS.

Give on the following lines the names and addresses of five representative cor... same industry or branch of the country engaged in the same kind of business.

1. Leyfus Co Vicksburg La
2. Kuri Co Manroe La
3. Meyer Dry Goods Co. " "
4. Levenco Vicksburg Miss
5. New Albert Co Houston Texas

INCORPORATION.

Date of incorporation 1896 1890

Under the laws of what State or country Louisiana

PREDECESSOR BUSINESSES.

If the corporation was not in existence during the whole of any one of the calendar ...1911–1913, is its business substantially a continuation of a business carried on during ...name of those years? _____ If so, give name under which, and ...in which its business was then carried on _____

ACQUISITION OF MIXED AGGREGATES OF ASSETS.

Did the corporation ever take over a going business or otherwise acquire a mixed ...kind of assets (property, patents and copyrights, and good will and other similar ...rights property, and pay for such property in whole or in part with stock or other ...securities?

If so, submit a statement showing—

(a) The name of the concern taken over (or from which the property was ...acquired);

(b) The nature of the assets and liabilities so acquired,

(c) The total par value of the stock issued therefor,

(d) The value at which each class of assets was carried on the books of the concern ...from which acquired (if obtainable submit a balance sheet of the predecessor corporation as of the date of acquisition),

(e) The value at which each item was entered on the books of the corporation making this return.

If patents, copyrights, secret processes or formulæ, good will, trade-marks, trade ...franchises, or other intangible property were acquired, state also the basis on which value was determined and how they were paid for.

AFFILIATIONS WITH OTHER CORPORATIONS (TO BE ANSWERED BY EVERY CORPORATION).

11. Do you own directly or control through closely affiliated interests or by a working or majority ownership over 50 per cent of the outstanding capital stock of another corporation or of other corporations? No

12. Is over 50 per cent of your capital stock owned by another corporation or by two or more corporations that are affiliated? No

13. Is over 50 per cent of your capital stock as well as over 50 per cent of the capital stock of another corporation or of other corporations owned or controlled by the same individual or partnership or by the same individuals or partnerships? No

14. Is this return a consolidated return within the meaning of Article 631 to 636, inclusive, of Regulations 69? No

15. Affiliated corporations as indicated in 11, 12, or 13 above must comply with the following requirements:

16. If the answer to question 11 is "yes," submit a statement showing for each of the corporations over 50 per cent of whose stock is owned or controlled by you, either directly or through closely affiliated interests or by a majority or working ownership—

(a) The name and address,

(b) The total par value of the outstanding capital stock of the beginning of the taxable year, and the date and amount of each change thereto;

(c) The total par value of such outstanding capital stock owned or controlled by you at the beginning of the taxable year, or at the date of acquisition if acquired during the taxable year, and the date and amount of each change thereto.

17. If the answer to question 13 is "yes," state—

(a) The name and address of such corporation or corporations;

(b) The par value and percentage of your stock held by each.

18. If the answer to question 13 is "yes," submit a statement showing—

(a) The names and addresses of such corporations;

(b) The names or names and address of addresses of the owning or controlling interest or interests;

(c) The total par value of the outstanding capital stock of such corporation at the beginning of the taxable year, and the date and amount of each change thereto;

(d) The total par value of the outstanding capital stock of [redacted] or controlled by each one of the owning individuals at the beginning of the taxable year, and the date and amount of each change thereto.

19. If the answer to question 14 is "yes," attach the information furnished under 16 and 18 should identify the corporations to be included in the consolidation.

20. If one corporation owns 95 per cent or more of the stock of another, or if 95 per cent or more of the stock of two or more corporations is owned by the same individual or individuals in substantially the same proportion, a consolidated return must be filed, except that the limitations as to ownership contained in Article 632 must be observed. If the stock is less than 95 per cent, but exceeds 80 per cent, the Commissioner of Internal Revenue may permit the filing of a consolidated return. The percentage of ownership of any group of affiliated corporations must be shown by the information called for above and in addition there file a statement fully disclosing the details of relations other than stock ownership, and all other facts which will be helpful in determining whether or not a consolidated return should be filed.

VALUATION OF CAPITAL STOCK.

21. What was the fair value of the total capital stock of the corporation as determined in the last assessment of the capital stock tax (if any)? $ 275000.00 Date of this assessment Year ending June 30 1918

LIST OF ATTACHED SCHEDULES.

Make below a list of all schedules attached to this return, giving for each a brief title and the appropriate symbol.

No 1	Explaining	Items	2	Schedule	A
" 2	"	"	5	"	A
" 3	"	"	10	"	A
" 4	"	"	12	"	A
" 5	"	"	13	"	A
" 6	Inventory & Balance Sheet June 30 1918				
" 7	"	"	"	May 31 1917	
" 8	"	Analysis Surplus		1917	

We, the undersigned, president and treasurer of the corporation for which this return is made, being severally duly sworn, each for himself and not one for the other, do depose and says that this return, including the accompanying schedules and statements, has been examined by him and is to the best of his knowledge and belief a true and complete return made in good faith pursuant to the Revenue Act of 1918 and the Regulations issued thereunder.

Sworn to and subscribed before me this 14th day of June, 1919.

A. A. Sedgers
Notary Public in and for La
(Official capacity.)

Seymour L. Flatau Jr.
President.

Louis L. Leubsdorf
Treasurer.

ESTABLISHED 1869

FORMERLY FLORSHEIM BROS. FURNISHING GOODS CO. FORMERLY FLORSHEIM, LOCKE & CO.

THE FLORSHEIM BROS. DRY GOODS CO. LTD

WHOLESALE

DRY GOODS NOTIONS AND FURNISHING GOODS

510 512 514 516 COMMERCE STREET

SHREVEPORT, LA.

NUMBER 1.

EXPLAINING ITEM 2, SCHEDULE A.

1.	Inventory JANUARY 1ST, 1918	$110.758.50
2.	Purchases 1918	731.627.01
3.	Home	
4.	Freight Paid 1918	14.302.00
5.	Total	856.687.51
6.	Inventory DECEMBER 31ST, 1918	257.941.79
7.	Cost of goods sold 1918	598,745.72

Inventory 9.000
Purchases
7.13

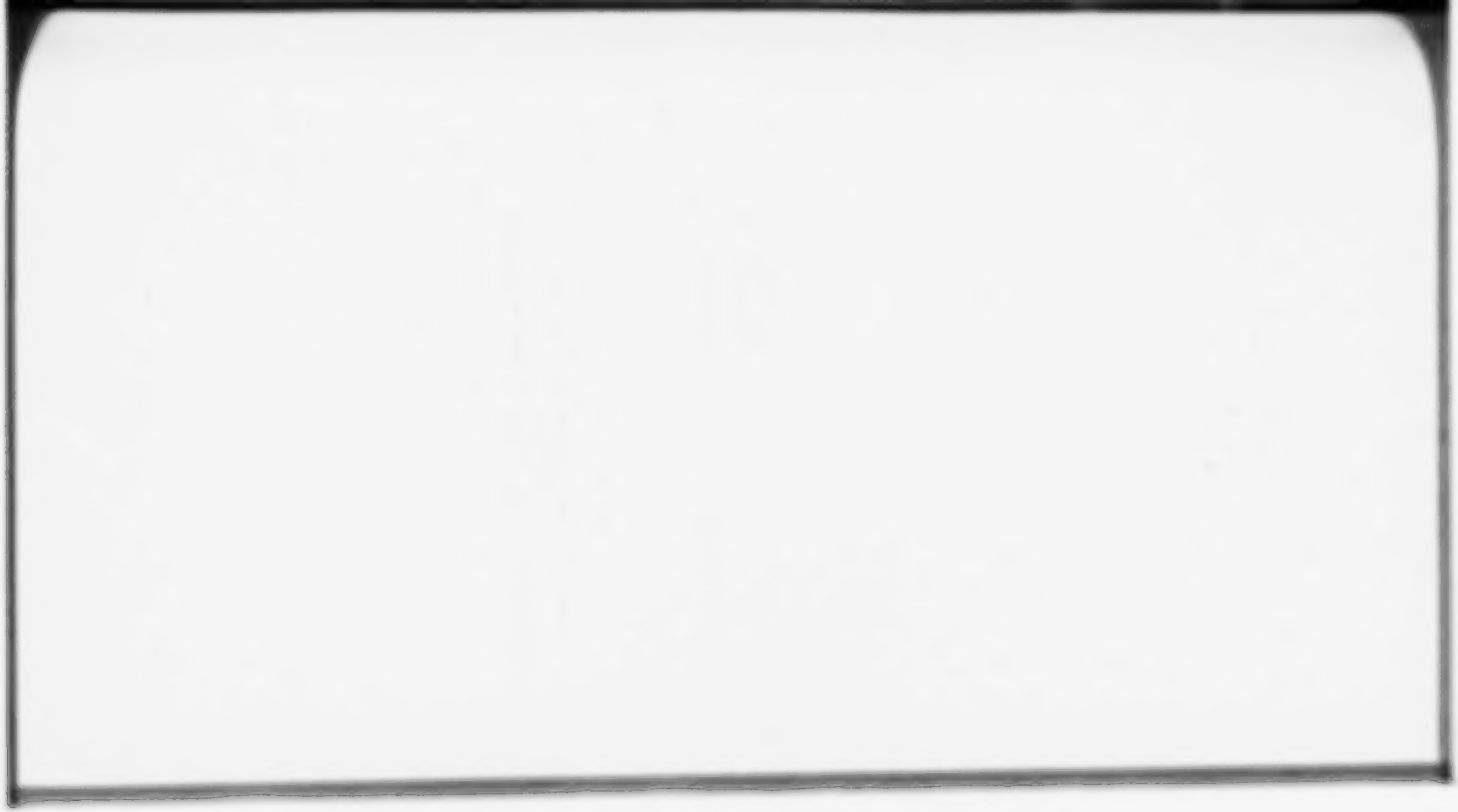
47

THE FLOURNOY BROS. DRY GOODS CO. LTD
WHOLESALE
DRY GOODS NOTIONS AND FURNISHING GOODS
SHREVEPORT, LA.

SCHEDULE E-

EXPLAINING ITEM 9, SCHEDULE A-

(a)	Interest from customers	$7,939.65
(b)	Discounts earned	2,741.14
	Total	$10,680.79



THE FLORSHEIM BROS. DRY GOODS CO. LTD.

WHOLESALE

DRY GOODS, NOTIONS AND FURNISHINGS GOODS

NORFOLK, VA.

NOTES B-

EXPLAINING ITEM 10, SCHEDULE A-

(a)	Bad debts previously charged off and recovered	$1,016.66
(b)	Insurance life of Mark Hess	2,000.00
	Total	$3,016.66

69

44-10

ESTABLISHED 1888

SEYMOUR L. FLORSHEIM, PRES'T. EDWARD H. FLORSHEIM, VICE PRES'T. LOUIS S. FLORSHEIM, SEC'Y & TREAS.

THE FLORSHEIM BROS. DRY GOODS CO., LTD.

WHOLESALE

DRY GOODS, NOTIONS AND FURNISHING GOODS

810 812 814 816 COMMERCE STREET

NEW YORK OFFICE 40 LEONARD ST.

SHREVEPORT, LA.

NUMBER 4-

EXPLAINING ITEM 12, SCHEDULE A-

(a)	Traveling salesmen's salaries	$10,650.00
(b)	House and office salaries	10,736.80
(c)	New York Buyer's salary	1,200.00
(d)	Traveling expenses	4,343.61
(e)	Rent	1,500.00
(f)	Insurance	5,516.89
(g)	Automobile repair and supplies	1,289.72
(h)	Stationery, printing and postage	1,083.51
(i)	Miscellaneous	4,636.70
	Total	$40,957.23

410

ESTABLISHED 1868

SEYMOUR L. FLORSHEIM PRES'T BERNARD H. FLORSHEIM V.PRES'T LOUIS S. FLORSHEIM SEC'Y-TREAS.

THE FLORSHEIM BROS. DRY GOODS CO., LTD.

WHOLESALE

DRY GOODS, NOTIONS AND FURNISHING GOODS

~~SIG~~ 514 BIG COMMERCE STREET

NEW YORK OFFICE 93 LEONARD ST

SHREVEPORT, LA.

NUMBER 5-

EXPLAINING ITEM 13, SCHEDULE A-

Name	Duties	Time	Shares	1916	1917.	1918
Henry Florsheim	President	All	248	6,000.00	10,000.00	
S.L. "	Secy-Treas.	"	10	3,600.00	6,000.00	
Louis S. "	Vice-Pres.	"	2	1,200.00	3,000.00	
E.H. "	Credit Man	"	2	2,400.00		
B.H. "	Director	"	2	900.00	2,400.00	
M.STRAUSS	Director	"	14		3,600.00	3,900.00
S.L. Florsheim	President	"	10			10,000.00
Louis S. "	Secy-Treas.	"	2			4,800.00
B.H. "	Vice-Pres.	"	2			2,400.00
Mrs.M.H. "	Director		250			6,000.00
				13,100.00	24,000.00	26,100.00

Increase in salaries of officers and directors of our company is due higher cost of living expenses, and increased duties to be performed account greater volume of business.

4-11

ESTABLISHED 1888

THE FLORSHEIM BROS. DRY GOODS CO., LTD.
WHOLESALE
DRY GOODS, NOTIONS AND FURNISHING GOODS
510 512 514 516 COMMERCE STREET
SHREVEPORT, LA.

NUMBER 8-

SCHEDULE D- ANALYSIS OF SURPLUS ACCOUNT.

1.	Surplus JAN.1ST,1918	125,882.43	
2.	Net Profit Schedule B, Item 1	94,990.92	
3.	None	None	220,873.35
Deduct-			
5.	JAN.2ND,1918 Dividend of 8% on $150,000 paid in cash	12,000.00	12,000.00
Surplus DEC.31ST,1918			$208,873.35

4-17

44-13

ORIGINAL

THIS FORM WITH DUPLICATE AND REMITTANCE COVERING ONE-FOURTH OF ESTIMATED TAX MUST REACH THE COLLECTOR'S OFFICE ON OR BEFORE MARCH 15, 1919.

Form 1031 UNITED STATES INTERNAL REVENUE SERVICE

TENTATIVE RETURN AND ESTIMATE OF CORPORATION INCOME AND PROFITS TAXES AND REQUEST FOR EXTENSION OF TIME FOR FILING RETURN

PRINT BELOW TAXPAYER'S NAME AND PRINCIPAL PLACE OF BUSINESS

62750404

Le Florshiem Bros Dry Goods Co Ltd
510 Commandery St
Shreveport La

To our order of the same
AMOUNT PAID
$15000.00
(Cashier's Signature)

Date Mch 10th 1919 (To be entered by taxpayer) No _____ (To be entered by Collector)

Collector of Internal Revenue,

New Orleans La

The amount stated below is remitted herewith in payment of not less than one-fourth of the estimated amount of the income, war profits, and excess-profits taxes for the year ended Dec. 31st 1918 of the corporation whose name and address appear at the head of this form

An extension of 45 days in the time allowed for filing a completed return is requested

It is not possible to file a completed return on or before March 15, 1919, for the following reasons

Unable to secure proper blanks and sufficient time since passage of act to properly inform ourselves

NOTE.—A parent company may make a tentative return and pay the first installment of the tax on behalf of all its subsidiaries without apportioning the tax among them until the completed return is filed.

Estimated amount of tax Sixty Thousand Dollars $ 60 000 00

Amount of remittance herewith:

Check or draft	Money order	Currency	Certificates of indebtedness	Total
$ 15000 00	$	$	$	$

AFFIDAVIT

The undersigned, president and treasurer, respectively, of the corporation whose name and address appear at the head of this form, being severally duly sworn, each for himself deposes and says that the foregoing is a fair estimate of the total amount of the income, war-profits, and excess-profits taxes of the said corporation for the period stated above, and that the above-stated reasons why a completed return can not be filed on or before March 15, 1919, are true.

Sworn to and subscribed before me this 10 day of Mch 1919

A B Grayer
Notary Public Caddo Parish La
(Official capacity)

Seymour L. Florsheim (President)

Louis L. Florsheim (Treasurer)

21

44-14

[fol. 46] Income and Profits Tax Waiver

Attach.
IT:CA:-2334-6. 1918.
Date: March 1, 1924. 371.

In pursuance of the provisions of subdivision (d) of Section 250 of the Revenue Act of 1921, Florsheim Bros. Dry Goods Co. Ltd., of Shreveport, La., and the Commissioner of Internal Revenue, hereby consent to a determination, assessment, and collection of the amount of income, excess-profits or war-profits taxes due under any return made by or on behalf of the said Florsheim Bros. Dry Goods for the year 1918 under the Revenue Act of 1921, or under prior income, excess-profits or war-profits tax Acts, or under Section 38 of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909. This waiver is in effect from the date it is signed by the taxpayer and will remain in effect for a period of one year after the expiration of the statutory period of limitation, or the statutory period of limitation as extended by any waive-s already on file with the Bureau, within which assessments of taxes may be made for the year or years mentioned.

The Florsheim Bros. Dry Goods Co., Limited, Taxpayer, by Seymour L. Florsheim, Pres. D. H. Blair, Commissioner. (Seal.)

[fol. 47] If this waiver is executed on behalf of a corporation, it must be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which, the seal, if any, of the corporation must be affixed.

Stamped: Received Mar. 4, 1924, Special Assessment Section.

Filed Nov. 10, 1927.

EXHIBIT P-4

Form NP-3

Treasury Department, Washington

Office of Commissioner of Internal Revenue.

Address reply to Commissioner of Internal Revenue, and refer to IT:E:SM. A-19896.

June 10, 1925.

Florsheim Brothers Dry Goods Company, Ltd., 510 Commerce Street, Shreveport, Louisiana.

SIRS: In accordance with the provisions of Section 274 (d) of the Revenue Act of 1924, there has been assessed against you an income and profits tax amounting to $11,282.15 for the taxable year 1918, the details of which are set forth in the attached statements.

[fol. 48] Under the provisions of Section 279 (a) of the Act you have the right to file with the Collector of Internal Revenue, within ten days after notice and demand for payment, a claim for abatement of this tax or any part thereof. The claim should have attached to it all evidence and data upon which you rely in support thereof, and should be accompanied by a bond not exceeding double the amount of the claim, with such sureties as the Collector deems necessary. When the claim is received by the Collector it will be transmitted to the Commissioner of Internal Revenue, Washington, D. C., who will notify you of the action taken.

Respectfully, J. G. Bright, Deputy Commissioner, by I. T. Enes, Chief of Section.

Enclosures: Statements.

Statement

P-4

IT:E:SM. IG-A19896.

In re Florsheim Bros. Dry Goods Co., Ltd., Shreveport, Louisiana.

Deficiency in Tax: Calendar year 1918, $11,282.15.

You are advised that after careful consideration and review, your application under the provisions of Section 327

for assessment of your profits tax as prescribed by Section [fol. 49] 328 of Revenue Act of 1918 has been allowed. Your profits tax is based upon a comparison with a group of representative concerns which in the aggregate may be said to be engaged in a like or similar trade or business to that of your company.

The result of the audit under the above mentioned provisions is as follows:

Profits tax, Section 328			$71,135 36
Net income, Bureau letter dated May 21, 1924		$132,648 81	
Less: Additional depreciation allowed on Furniture and Fixtures capitalized—10% of $1,000.00		100 00	
Corrected net income		$132,548 81	
Less: Profits tax	$71,135 36		
Exemption	2,000 00		
		73,135 36	
Balance taxable at 12%		$59,413 45	7,129 61
Total tax assessable			$78,264 97
Tax previously assessed: Account No. 41732			66,982 82
Additional tax			$11,282 15

Filed Nov. 10, 1927.

[fol. 50] Exhibit P-5

Form 7650—Revised July, 1924

Notice and Demand for Income Tax

United States Internal Revenue Service

Notice is hereby given that there has been assessed against you the amount stated hereon. Demand is hereby made for immediate payment of said tax. If payment is

not made within ten days after date of this notice, the Act provides that interest at the rate of 1 per cent per month will accrue from the due date.

Dated June 18, 1925.

Name and address: Plotnikoff Bros. Dry Goods Co., Ltd., Shreveport, La., 519 Commerce St.

Items: ——

June 60 C SPL, No. 4.

Date: ——,

Collector's paid stamp: ——.

To the Collector of Internal Revenue at New Orleans:

I enclose herewith the sum of $— in payment of the tax shown below.

Name: —— ——, Address: ——,

Total Assessment: 11,282.55.

Return this form with remittance.

Filed Nov. 10, 1927. W. B. Lee, Clerk U. S. Dist. Court, West. Dist. of Louisiana.

[Ed. 16] P-5

Penalty Envelope

Treasury Department, Office of Collector of Internal Revenue, New Orleans, La.

Return after Five days.

Stamped: New Orleans, La. Jun. 18, 3 P. M., 1925, La. 2970.

Filed Nov. 10, 1927.

Exhibit P-6

United States of America, Treasury Department

November 22, 1926.

Pursuant to Section 882 of the Revised Statutes I hereby certify that the annexed is a true copy of Claim for Refund of $11,282.55, Income Tax for 1918, filed by Plotnikoff Bros. Dry Goods Company, Ltd., Shreveport, Louisiana, on file in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury.

F. A. Birgfeld, Chief Clerk. (Seal.)

NKF AWG HRS R.

Re Fb.

Filed Nov. 10, 1927.

Treasury Department, Internal Revenue Service. Form 843—Jan., 1922. Comptroller General U. S. January 18, 1922.

Annual 1919 No. 41732 and Com. Jun. 4, 1925. OOC Spl. [Ed. 32] F815 922302.

(Execute separate form for each period.)

Claim for

— Abatement of tax assessed

— Credit against outstanding assessments

x Refund of taxes illegally collected

— Refund of amounts paid for stamps used in error or excess

Notice to collector: Collector must indicate in block above the kind of claim, except in Income Tax cases.

Date received by Administrative Unit—Recorded Mch. 11, 1926, Claims Control Section. Stamp here.

Collector's Notation: District: ——. Account number: ——. Date received: Stamp here—Collector Int. Revenue Rec'd Mar. 2, 1926 Dist. of La. —— ——, Collector of Internal Revenue.

Important: File with Collector of Internal Revenue where assessment was made. Not acceptable unless completely filled in.

State of Louisiana,

Parish of Caddo, ss:

Type or print:

(Name of taxpayer or purchaser of stamps:) The Florsheim Bros. Dry Goods Co. Ltd., (Residence—give street and number as well as city or town and State:) 510-16 Commerce Street, Shreveport, Louisiana; (Business address:) —— ——,

[fol. 53] This depondent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

Period from Jan. 1, 1918, to Dec. 31, 1918.

1. Business in which engaged—Wholesale dry goods, notions, furnishings.

2. Character of assessment or tax—Corporation Income and Profits Tax. (State for or upon what the tax was assessed or the stamps affixed.)

3. Amount of assessment or stamps purchased—$78,264.97.

4. Reduction of Tax Liability requested (Income and Profits Tax)—$11,282.15.

5. Amount to be abated—none.

6. Amount to be refunded (or such greater amount as is legally refundable)—$11,282.15.

7. Dates of payment (see Collector's receipts or indorsements of canceled checks): ——. (If statement covers income tax liability, items 8-11, inclusive, must be answered.)

8. District in which return (if any) was filed: ——.

9. District in which unpaid assessment appears: ——.

[fol. 54] 10. Amount of overpayment claimed as credit—none.

11. Unpaid assessment against which credits is asked; period from—none.

Rec'd Collector Internal Revenue, Dist. of Louisiana. Feb. 25, 1926.

Received March 5, 1926, Claims Control Section, La.

Deponent verily believes that this application should be allowed for the following reasons:

Tentative return was filed for year 1918, before March 15, 1919; on June 14, 1919, the complete return was mailed for 1918, (June 15, 1919 was on Sunday) Collector therefore received return on June 16, 1919. Five year statute of

Limitation prescribed by Section 277 of the Revenue Act of 1924 caused the time within which the Commissioner might make an assessment to expire on or before June 16, 1924; this however was extended to June 16, 1925, by taxpayer signing a waiver of the Statutes of Limitation. This was not further extended. Under date of June 10th, 1925, file reference, IT:ELSM: A-19896, the Commissioner advised taxpayer a deficiency in the sum of $11,282.15 was being immediately assessed. Notice and demand dated June 18, 1925, for the payment of $11,282.15 was mailed from New Orleans, La. on June 18, 1925, which taxpayer paid under protest after having been granted permission to extend payment thereof as provided by Section 270 of the Revenue Act of 1924. Taxpayer in application for this extension made its position clear that the correctness and legality of the tax was not being accepted, and was being paid only to avoid [fol. 55] distraint and seizure. It was at that time contended and is now here made the basis of this claim for refund that the tax was not legal, no proceedings for collection thereof having been begun before June 16, 1925, which was the last date within the legal time, therefore the tax has been illegally collected and should be refunded. In this position taxpayer cites the case of New York and Albany Literage Company vs. Bowers, Collector, decided by the United States District Court for the Southern District of New York on February 13, 1925 and on February 1, 1926, affirmed by the Circuit Court of Appeals for the Second Circuit.

(Attach additional sheets if necessary.)

(Signed) The Florsheim Bros. Dry Goods Co., Ltd.
Seymour L. Florsheim, Sec. and Treas.

Sworn to and subscribed before me this 24th day of Feby., 1926. A. B. Freyer, (Title:) Notary Public, Caddo Ph., La.

(This affidavit may be sworn to before a Deputy Collector of Internal Revenue or Revenue Agent without charge.)
e-1 o2—11704.

[fol. 56] Clerk's certificate to foregoing transcript omitted in printing.

Citation of appeal filed in the office of the Clerk of the United States Circuit Court of Appeals.

* * * * * * *

[fol. 57] Minute entry of argument and submission December 12, 1928, omitted in printing.

[fol. 58] In United States Circuit Court of Appeals, Fifth Circuit

No. 5295

Florsheim Bros. Dry Goods Company, Ltd., Appellant,

versus

United States of America, Appellee

Appeal from the District Court of the United States for the Western District of Louisiana

Before Walker, Bryan, and Foster, Circuit Judges

Opinion—Filed December 19, 1928

Bryan, Circuit Judge:

This was a suit by appellant to recover back the amount of taxes which it paid under protest upon its income, war profits, and excess profits, for the year 1918.

It was based on the sole ground that the Government forced collection of the taxes after the running of the statute of limitations. The district court held that the taxes were collected within the period prescribed by law, and entered judgment dismission the suit.

[fol. 59] On March 15, 1919, appellant filed a tentative tax return for the year 1918, and received an extension of time for filing its completed return, which was made on June 14, 1919. In March 1, 1924, appellant and the Commissioner of Internal Revenue signed a written or printed instrument in the following form:

"In pursuance of the provisions of subdivision (d) of Section 250 of the Revenue Act of 1921, Florsheim Bros. Dry Goods Co. Ltd., of Shreveport, La., and the Commissioner of Internal Revenue, hereby consent to a determination, assessment, and collection of the amount of income, excess-profits or war-profits taxes due under any return made by or on behalf of the said Florsheim Bros. Dry Goods for the year 1918 under the Revenue Act of 1921, * * * This waiver is in effect from the date it is signed by the taxpayer and will remain in effect for a period of one year after the expiration of the statutory period of limitation, or the statutory period of limitation as extended by any waiver already on file with the Bureau, within which assessments of taxes may be made for the year or years mentioned."

The additional taxes here involved were assessed by the commissioner on June 11, 1925, and were paid under protest on dates later than June 14, 1925.

Under § 250(d) of the Revenue Act of 1921, it was required that taxes for prior years, including 1918, should be returned and assessed within five years "after the return was filed, unless both the Commissioner and the tax-payer consent in writing to a later determination, assessment and collection of the tax; and no suit or proceeding for the collection of any such taxes * * * shall be begun, after [fol. 60] the expiration of five years after the date when such return was filed." As a final return was made on June 14, 1919, the statute of limitations, unaffected by the written consent, would have run on June 14, 1924. It is suggested in argument that the statutory period of limitations began to run from the date of the tentative return in March of 1919; but we are of opinion that the return meant by the statute was the final or completed return.

The consent in writing, entered into by appellant and the Commissioner, had the effect of extending the limitation of the statute for one year or until June 14, 1925. The Revenue Act of 1924, which became effective on June 2, 1924, by § 278(d) provides that a tax which had been assessed within the period prescribed by law could be collected by distraint or by a proceeding in court begun within six years after the assessment thereof. As the taxes here involved were assessed on June 11, 1925, they were assessed within the statutory period of five years as extended by the written

consent of appellant and the commissioner. In United States v. Crooks, 18 F. (2) 449, this court held that, if the statutory period of limitations had not expired at the time of the passage of the Revenue Act of 1924, and if the assessment of the tax had been timely made after its passage, the period for collection was extended for six years from the date of the assessment. A result of that decision is that the collection of taxes in the instant case was not barred by the statute of limitations. The consent in writing simply served to enlarge the period of limitations and otherwise to leave unchanged the provisions of law relating to collection as well as to determination and assessment of the taxes. The form adopted is in strict compliance with § 250(d) of [fol. 61] the Act of 1921, and it was not intended by that section to authorize an agreement by the commissioner to change the existing rights of the parties. Postponement of the period of limitation was all that was authorized by the law or attempted by the consent in writing. This case does not in anywise differ in principle from the case of United States v. Crooks, supra.

The judgment is affirmed.

[fol. 62] IN UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

No. 5295

FLORSHEIM BROS. DRY GOODS COMPANY, LTD.,

versus

UNITED STATES OF AMERICA

JUDGMENT—Dec. 19, 1928

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

[fols. 63-69] Petition for Rehearing, January 7, 1929, covering seven pages, omitted from this print. It was denied and nothing more by order March 1, 1929.

[fol. 70] In United States Circuit Court of Appeals

[Title omitted]

Order Denying Rehearing—Mar. 1, 1929

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 71] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 72] Supreme Court of the United States

Order Allowing Certiorari—Filed October 14, 1929

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 34,249. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 118. Florsheim Brothers Drygoods Company, Ltd., petitioner, vs. The United States of America. Petition for writ of certiorari and exhibit thereto. Filed May 31st, 1929. File No. 34,249.